



## LEGISLATIVE AND PUBLIC POLICY COMMITTEE MEETING NOTICE/AGENDA

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### Meeting Site

State Council Office  
1507 21<sup>st</sup> Street, Suite 210  
Sacramento, CA 95811  
(916) 322-8481

### Teleconference Site

Tri-Counties Regional Center  
1900 E. Los Angeles Avenue,  
Second Floor  
Simi Valley, CA

**APRIL 21, 2011**

**10:00 a.m. – 4:00 p.m.**

*Pursuant to Government Code Sections 11123.1 and 11125(f), individuals with disabilities who require accessible alternative formats of the agenda and related meeting materials and/or auxiliary aids/services to participate in the meeting, should contact Michael Brett at (916) 322-8481 or [michael.brett@scdd.ca.gov](mailto:michael.brett@scdd.ca.gov) by 5:00 pm, April 15, 2011.*

*\*Denotes action item.*

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- |                                   |              |   |
|-----------------------------------|--------------|---|
| 1. CALL TO ORDER                  | R. Ceragioli |   |
| 2. ESTABLISHMENT OF QUORUM        | R. Ceragioli |   |
| 3. INTRODUCTIONS AND ANNOUNCEMENT | R. Ceragioli |   |
| 4. * APPROVAL OF 3/17/11 MINUTES  | R. Ceragioli | 3 |
| 5. PUBLIC COMMENTS                |              |   |

*This item is for members of the public only to provide comments and/or present information to the Council on matters **not** on the agenda. Each person will be afforded up to three minutes to speak. Written requests, if any, will be considered first. The Council will provide a public comment period, not to exceed a total of seven minutes, for public comment prior to action on each agenda item.*

## **6. LEGISLATIVE ISSUES**

### **A. State Legislation**

|                                 |                |    |
|---------------------------------|----------------|----|
| (i) * Assembly Bill 1375        | C. Arroyo      | 6  |
| (ii) * Senate Bill 764          | C. Arroyo      | 11 |
| (iii) * Senate Bill 161         | M. Corral      | 14 |
| (iv) * Assembly Bill 1205       | C. Arroyo      | 34 |
| (v) * Senate Bill 462           | M. Corral      | 46 |
| (vi) * Assembly Bill 876        | K. Alipourfard | 57 |
| (vii) * Assembly Bill 862       | M. Corral      | 76 |
| (viii) * Assembly Bill 533      | K. Alipourfard | 85 |
| (ix) Senate Bill 176            | Dead           | 90 |
| (x) Senate Bill 889             | Dead           | 94 |
| (xi) Council Legislative Update | C. Arroyo      |    |

|                                |           |    |
|--------------------------------|-----------|----|
| B. 2011-12 State Budget Update | C. Risley | 96 |
|--------------------------------|-----------|----|

## **7. POLICY ISSUES**

|                                  |            |
|----------------------------------|------------|
| A. *Council Legislative Platform | M. Barraza |
|----------------------------------|------------|

## **8. EXECUTIVE COMMITTEE ACTION ON LPPC ITEMS**

R. Ceragioli

## **9. AREA BOARD LEGISLATIVE UPDATES**

R. Smith

## **10. INFORMATION ITEMS**

C. Arroyo

## **11. ADJOURNMENT**

R. Ceragioli

**DRAFT**  
**Legislative & Public Policy (LPPC) Committee Minutes**  
**Thursday, March 17, 2011**

**Members Present**

Ray Ceragioli, Chair  
Jennifer Allen  
Tho Vinh Banh  
Marilyn Barraza  
Dan Boomer  
Lisa Cooley  
Denise Filz  
Connie Lapin  
David Mulvaney  
Margaret Shipp  
Leroy Shipp  
Rocio Smith

**Members Absent**

Dan Boomer  
Robin Hansen  
Bill Moore  
Michael Rosenberg

**Others Present**

Karim Alipourfard  
Christofer Arroyo  
Michael Brett  
Carol Risley

**1. CALL TO ORDER**

Ray Ceragioli, Chairperson, called the meeting to order at 10:05 AM.

**2. ESTABLISHMENT OF A QUORUM**

A quorum was established.

**3. INTRODUCTIONS AND ANNOUNCEMENTS**

Members introduced themselves and announcements were made.

**4. APPROVAL OF 10/5/10 MEETING MINUTES PUBLIC COMMENTS**

It was moved, seconded (L. Shipp/Lapin), and carried to approve the 2/17/11 Committee minutes as presented (1 abstention).

**5. PUBLIC COMMENTS**

No comments were provided.

## **6. SCDD/AREA BOARD UPDATES**

The LPPC discussed the following bills and took the following actions:

- Assembly Bill (AB) 254 – it was moved, seconded (L. Shipp/Mulvaney) and carried to support the intent of AB 254.
- AB 479 – it was moved, seconded (Barraza/Lapin) and carried to watch AB 479.
- AB 518 – it was moved, seconded (Lapin/Cooley) and carried to support AB 518 (1 abstention).
- SB 382 – it was moved, seconded (Barraza/Cooley) and carried to support the concept of SB 382. (1 abstention)
- Senate Bill 166 – it was moved, seconded (Lapin/Mulvaney) and carried to support the intent of SB 166.
- AB 519 – it was moved, seconded (Barraza/L. Shipp) and carried to supports AB 519 with amendments to eliminate seclusion immediately. (1 abstention)
- AB 309 – it was moved, seconded (Lapin/L. Shipp) and carried to watch AB 309 bill.
- AB 594 – it was moved, seconded (Lapin/Barraza) and carried to watch AB 594 with a request for the Council to participate as a stakeholder.
- AB 1244 – it was moved, seconded (Lapin/Barraza) and carried to support the concept of AB 1244 and work with the bill author to refine it.

The legislative report was reviewed and several bills were highlighted for future action.

The status and actions on state budget were reviewed. LPPC suggested that input be provided to DDS that the public should have an opportunity to review the best practices/service standards before they are provided to the Legislature.

## **7. POLICY ISSUES**

The LPPC decided by consensus to create a brief legislative platform. Marilyn will take everyone's input in creating a draft platform.

## **8. COUNCIL ACTION ON LPPC ITEMS**

Ray reported that the Council took the following actions on bills recommended by LPPC:

- Assembly Bill (AB) 171 – support
- AB 181 – support if amended
- AB 39 – support
- Senate Bill 121 – watch
- AB 170 – oppose unless amended
- AB 154 – support with amendments
- Budget trailer bill language – supported all of the LPPC recommendations with amendments to two items:
  - opposed language to **reduce** or eliminate adult day programs.
  - opposed standards/best practices that result in the reduction of needed services

## **9. AREA BOARD LEGISLATIVE UPDATES**

Rocio was interviewed on a radio program regarding cuts to services for people with developmental disabilities.

## **10. INFORMATION ITEMS**

The Pocket Directory of the California Legislature was distributed and corrected information for Assemblymember Brownley was shared.

## **11. ADJOURNMENT**

The meeting was adjourned at 3:40 pm.



## LEGISLATIVE AGENDA ITEM DETAIL SHEET

**BILL NUMBER/ISSUE:** Assembly Bill (AB) 1375 -developmental services: autism services guidelines

**SUMMARY:** This bill would require the Department of Developmental Services (DDS) to develop guidance for regional centers (should read "centers", bill is in error) in regard to the treatment of autism spectrum disorders and develop a list of evidence-based behavioral and developmental, relationship-based therapies to assist the regional centers in determining which therapies qualify as evidence-based practices. The bill would also require the DDS to direct the regional centers to fund evidence-based practices on the list, as well as other evidence-based therapies prescribed by the consumer's clinical practitioner, so long as those therapies can be shown to meet the definition of an evidence-based practice.

**BACKGROUND:** There has been long and increasing criticism of some treatments requested by families and funded by regional centers for the treatment of individuals with autism disorders related to the methods, outcomes or lack thereof and expense of different approaches.

**ANALYSIS/DISCUSSION:** This bill is similar to Senate Bill (SB) 764, although SB 764 remains a spot bill at the time of this writing. A troubling aspect of this bill is the requirement that regional centers be directed to fund evidenced-based practices as prescribed by the consumer's clinical practitioner without any relationship to that decision being made as part of the IPP process and, as part of that process, designed to achieve certain outcomes.

**COUNCIL STRATEGIC PLAN OBJECTIVE:** Shape public policy that positively impacts Californians with developmental disabilities and their families.

**PRIOR COUNCIL ACTIVITY:** None

**RECOMMENDATION(S):** Watch AB 1375 and raise the issue of the requirement to purchase services outside of the IPP process as being inconsistent with the overall scheme of the Lanterman Act.

**ATTACHMENT(S):** AB 1375

**PREPARED:** Christofer Arroyo, April 6, 2011





AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1375**

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**Introduced by Assembly Member Huber**

February 18, 2011

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*An act to add Section 4643.4 to the Welfare and Institutions Code, relating to developmental services.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1375, as amended, Huber. Developmental services: autism ~~services guidelines~~ *spectrum disorders*.

Under existing law, the Lanterman Developmental Disabilities Services Act, the State Department of Developmental Services is authorized to contract with regional centers to provide support and services to individuals with developmental disabilities.

~~This bill would provide that it is the intent of the Legislature to enact legislation that would promote statewide standardized guidelines, best practices, and innovative approaches for the provision of services and supports through regional centers for the evaluation and treatment of individuals with autism spectrum disorders from birth to 5 years of age~~ *require the department to develop guidance for regional centers in regard to the treatment of autism spectrum disorders and develop a list of evidence-based behavioral and developmental, relationship-based therapies to assist the regional centers in determining which therapies qualify as evidence-based practices. The bill would also require the department to direct the regional centers to fund evidence-based practices on the list, as well as other evidence-based therapies prescribed by the consumer's clinical practitioner, so long as those*

*therapies can be shown to meet the definition of an evidence-based practice.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. *The Legislature finds and declares all of the*  
2     *following:*

3     (a) *The incidence of autism in California has risen dramatically*  
4     *in recent years.*

5     (b) *Autism spectrum disorders (ASDs) encompass a wide variety*  
6     *of related disorders from autism to Asperger's syndrome to*  
7     *pervasive developmental disorder - not otherwise specified.*

8     (c) *No two children on the spectrum exhibit the same symptoms*  
9     *and challenges.*

10    (d) *While, as of yet, there is no cure for autism, early*  
11    *intervention has been shown to have a positive impact in nearly*  
12    *all children on the spectrum; improving function and reducing the*  
13    *need for future services.*

14    (e) *There is a wide variety of evidence-based treatments for*  
15    *ASDs available. These include behavioral interventions, including,*  
16    *but not limited to, applied behavioral analysis; developmental,*  
17    *relationship-based interventions, including, but not limited to,*  
18    *DIR/Floortime and Relationship Development Intervention (RDI);*  
19    *and other speech, occupational, and physical therapies.*

20    (f) *Just as no two children on the spectrum exhibit the same*  
21    *symptoms and challenges, children on the spectrum respond to*  
22    *treatments differently. An effective intervention for one child may*  
23    *not be effective in another.*

24    (g) *For many children, studies have shown that a combination*  
25    *of evidence-based intervention therapies tailored to the needs of*  
26    *the child have shown the most promise in reducing the impact of*  
27    *autism and allowing for the maximum development of a child's*  
28    *potential.*

29    (h) *Different regional centers offer consumers within their*  
30    *geographic base a different set of autism therapies.*

31    (i) *Often, the only means available to parents who wish to*  
32    *provide their child with the most effective set of therapies tailored*  
33    *to their child's specific individual needs is to relocate from the*

1 *jurisdiction of a regional center that does not offer the optimum*  
2 *service or mix of services to the jurisdiction of another regional*  
3 *center that does.*

4 *(j) For most parents, this forced relocation is impractical or*  
5 *impossible, resulting in the child being provided services that do*  
6 *not meet his or her specific individual needs. This results in the*  
7 *expenditure of state funds for ineffective treatments and a loss of*  
8 *opportunity for the child's development.*

9 *(k) There is a need for a broader offering of evidence-based*  
10 *services in order to maximize the effectiveness of treatment for*  
11 *each child on an individual basis at all regional centers.*

12 *(l) Services funded through the Lanterman Act and the regional*  
13 *centers must be evidence-based practices in order to ensure that*  
14 *state funds are expended on proven therapies.*

15 *(m) As with autism, there are a wide variety of infant mental*  
16 *health treatments that fall into several broad categories, including*  
17 *behavioral and developmental and relationship-based therapies.*  
18 *Over the last 30 years, there has been a growing body of*  
19 *established knowledge, expertise, and competencies for the practice*  
20 *of infant mental health.*

21 *(n) Infant mental health therapies are vital to preventing or*  
22 *reducing future mental health problems as the child ages.*

23 *(o) Infant mental health diagnoses fall across a broad range of*  
24 *diagnoses. Often, there is a cooccurrence of both developmental*  
25 *delays and social-emotional delays, wherein a child can have more*  
26 *than one diagnosis across both the autism spectrum and mental*  
27 *health categories.*

28 *(p) The appropriate evidence-based practice for infant mental*  
29 *health is determined by the child's diagnosis or diagnoses, specific*  
30 *individual needs, professional judgment, and the culture and values*  
31 *of the child's family.*

32 *(q) Arbitrarily confining funding to a narrow set of approved*  
33 *therapies places the state in the role of medical practitioner.*

34 *(r) When the state, acting as a de facto medical practitioner,*  
35 *prescribes therapies for a child by limiting the therapies available*  
36 *without an appropriate assessment of the child, the prescribed*  
37 *therapies are likely to be inappropriate, wasteful of state resources,*  
38 *and potentially injurious to the mental health of the child.*

1 (s) *State funding for infant mental health should be confined to*  
2 *evidence-based practices in accordance with infant mental health*  
3 *competencies established for this field.*

4 (t) *Both autism and infant mental health are subject to*  
5 *conflicting and incomplete definitions of evidence-based practices*  
6 *in statute.*

7 SEC. 2. *Section 4643.4 is added to the Welfare and Institutions*  
8 *Code, to read:*

9 4643.4. (a) *The department shall do all of the following:*

10 (1) *Develop guidance for the regional centers that clarifies that*  
11 *each regional center should provide consumers with a wide variety*  
12 *of evidence-based ASDs treatments tailored to the individual needs*  
13 *of the consumer.*

14 (2) *Develop a list of evidence-based behavioral and*  
15 *developmental, relationship-based therapies to assist the regional*  
16 *centers in determining which therapies qualify as evidence-based*  
17 *practices.*

18 (3) *Direct the regional centers to fund evidence-based practices*  
19 *on the list developed pursuant to paragraph (2), as well as other*  
20 *evidence-based therapies prescribed by the consumer's clinical*  
21 *practitioner, so long as those therapies can be shown to meet the*  
22 *definition of an evidence-based practice.*

23 (b) *The department may consult with outside third parties,*  
24 *including, but not limited to, the University of California's*  
25 *University Centers for Excellence for Developmental Disabilities,*  
26 *to develop the list required in subdivision (a), as long as the*  
27 *criteria for selection of best practices conforms to the definition*  
28 *of evidence-based practices.*

29 (c) *Nothing in this section shall be construed as increasing the*  
30 *appropriations to the regional centers.*

31 ~~SECTION 1. It is the intent of the Legislature to enact~~  
32 ~~legislation that would promote statewide standardized guidelines,~~  
33 ~~best practices, and innovative approaches for the provision of~~  
34 ~~services and supports through regional centers for the evaluation~~  
35 ~~and treatment of individuals with autism spectrum disorders from~~  
36 ~~birth to five years of age.~~

## LEGISLATIVE AGENDA ITEM DETAIL SHEET

**BILL NUMBER/ISSUE:** Senate Bill (SB) 764 (Steinberg), developmental services: autism services guidelines

**BILL SUMMARY:** This bill would state the intent of the Legislature to subsequently amend this bill to include provisions that would promote statewide standardized guidelines, best practices, and innovative approaches for the provision of services and supports through regional centers for the evaluation and treatment of individuals with autism spectrum disorders from birth to 5 years of age.

**BACKGROUND:** There has been long and increasing criticism of some treatments requested by families and funded by regional centers for the treatment of individuals with autism disorders related to the methods, outcomes or lack thereof and expense of different approaches.

**ANALYSIS/DISCUSSION:** SB 764 is presently a spot bill. An identical spot bill, Assembly Bill 1375 was recently amended to require the Department of Developmental Services (DDS) to develop guidance for regional centers (language in bill in error, should read "centers") in regard to the treatment of autism spectrum disorders and develop a list of evidence-based behavioral and developmental, relationship-based therapies to assist the regional centers in determining which therapies qualify as evidence-based practices. AB 1375 would also require DDS to direct the regional centers to fund evidence-based practices on the list, as well as other evidence-based therapies prescribed by the consumer's clinical practitioner, so long as those therapies can be shown to meet the definition of an evidence-based practice .

**COUNCIL STRATEGIC PLAN OBJECTIVE:** Shape public policy that positively impacts Californians with developmental disabilities and their families.

**PRIOR COUNCIL ACTIVITY:** None

**RECOMMENDATION(S):** Watch SB 764 since it is a spot bill and may be used for other issues impacting persons with developmental disabilities.

**ATTACHMENT(S):** SB 764

**PREPARED:** Christofer Arroyo, March 30, 2011



**Introduced by Senator Steinberg**

February 18, 2011

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An act relating to developmental services.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 764, as introduced, Steinberg. Developmental services: autism services guidelines.

Under existing law, the Lanterman Developmental Disabilities Services Act, the State Department of Developmental Services is authorized to contract with regional centers to provide support and services to individuals with developmental disabilities.

This bill would state the intent of the Legislature to subsequently amend this bill to include provisions that would promote statewide standardized guidelines, best practices, and innovative approaches for the provision of services and supports through regional centers for the evaluation and treatment of individuals with autism spectrum disorders from birth to 5 years of age.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. It is the intent of the Legislature to subsequently
- 2     amend this measure to include provisions that would promote
- 3     statewide standardized guidelines, best practices, and innovative
- 4     approaches for the provision of services and supports through

- 1 regional centers for the evaluation and treatment of individuals
- 2 with autism spectrum disorders from birth to five years of age.

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## LEGISLATIVE AGENDA ITEM DETAIL SHEET

**BILL NUMBER/ISSUE:** Senate Bill (SB) 161

**BILL SUMMARY:** This bill would authorize a school district to provide school employees with voluntary emergency medical training to provide Diastat to students having a seizure and are in an emergency situation in accordance with developed guidelines. The bill has passed the Education Committee.

**BACKGROUND:** Existing law provides that school personnel with voluntary medical training may provide emergency medical assistance to students with diabetes while encountering severe hypoglycemia.

This bill would mirror that process for students experiencing a seizure.

**ANALYSIS/DISCUSSION:** Students with epilepsy may experience seizure(s) during the school day that may: 1) pose a barrier in receiving Free Appropriate Public Education (FAPE); 2) pose a barrier to their meaningful participation during a typical school day; and/ or 3) put them at risk of serious injury or death if no intervention is provided.

This bill would create a *voluntary* process for parents to request that a their child's school offer voluntary training to staff so that in the event their child has a seizure during the school day, legally prescribed Diastat may be administered in accordance with guidelines (which are not currently available).

The California Teachers Association opposes the bill because it: 1) does not provide funding for training; 2) fails to recognize multiple types of seizures; 3) does not address the privacy and dignity of the student (it is a rectally delivered medication); 4) staff liability; and 5) time required to observe students for side effects of medication.

The California Association of School Business Officials, Health Officers Association of California, Special Education Local Plan Area Administrators, and numerous County Boards of Education support the bill since it would provide students with an out-of-hospital intervention that could protect the student's health.

**COUNCIL STRATEGIC PLAN OBJECTIVE:** Shape public policy that positively impacts Californians with developmental disabilities and their families.

**PRIOR COUNCIL ACTIVITY:** None

**RECOMMENDATION(S):** Support SB 161, however consider if amendments should be offered to support the protection of the student's health, safety, privacy and dignity during the intervention.

**ATTACHMENTS:** SB 161 and Senate Health Committee analysis

**PREPARED:** Melissa C. Corral, March 24, 2011

AMENDED IN SENATE MARCH 9, 2011

**SENATE BILL**

**No. 161**

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**Introduced by Senator Huff**  
**(Coauthor: Senator Rubio)**  
(Coauthor: Assembly Member Halderman)

February 2, 2011

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An act to add and repeal Section 49414.7 of the Education Code, relating to pupil health.

LEGISLATIVE COUNSEL'S DIGEST

SB 161, as amended, Huff. Schools: emergency medical assistance: administration of epilepsy medication.

Existing law provides that in the absence of a credentialed school nurse or other licensed nurse onsite at the school, a school district is authorized to provide school personnel with voluntary medical training to provide emergency medical assistance to pupils with diabetes suffering from severe hypoglycemia.

This bill would authorize a school district to provide school employees with voluntary emergency medical training to provide, in the absence of a credentialed school nurse or other licensed nurse onsite at the school, emergency medical assistance to pupils with epilepsy suffering from seizures, in accordance with ~~performance standards~~ *guidelines* developed by specified entities. ~~The bill would authorize the State Department of Public Health to approve the performance standards for distribution and make the standards available upon request.~~ The bill would allow a parent or guardian of a pupil with epilepsy who has been prescribed Diastat by the pupil's health care provider to request the pupil's school to have one or more of its employees receive voluntary training, as specified, in order to administer Diastat, as defined, in the

event that the pupil suffers a seizure when a nurse is not available. The bill would require a school that decides to train school employees to distribute an electronic notice, as specified, to all staff regarding the request. The bill would make various legislative findings and declarations and state the intent of the Legislature in enacting this measure. The bill would repeal these provisions on January 1, 2017.

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. (a) The Legislature finds and declares ~~that all~~  
2 *all of the following:*

3 (1) *All individuals with exceptional needs have a right to*  
4 *participate in a free appropriate public education, and that special*  
5 *instruction and services for these individuals are needed in order*  
6 *to ensure they have the right to an appropriate educational*  
7 *opportunity to meet their unique needs in compliance with the*  
8 *federal Individuals with Disabilities Education Act (20 U.S.C. Sec.*  
9 *1400 et seq.).*

10 ~~(b) The Legislature finds and declares that there are specific~~  
11 ~~circumstances when it is necessary for nonmedical school staff,~~  
12 ~~who have volunteered and been trained, to administer medication~~  
13 ~~to pupils. The Legislature further finds and declares that the~~  
14 ~~circumstances necessitating nonmedical personnel to administer~~  
15 ~~medication to a pupil shall meet the following criteria:~~

16 (2) *The federal Food and Drug Administration has determined*  
17 *that Diastat is an emergency medication approved for*  
18 *administration by trained, nonmedical persons.*

19 (3) *If all of the following specific circumstances are met, then*  
20 *the safety and welfare of a pupil may be compromised,*  
21 *necessitating the authorization of nonmedical school staff, who*  
22 *have volunteered and been trained, to administer Diastat to a*  
23 *pupil:*

24 ~~(1) The~~

25 (A) *A pupil's health care provider states that the medication*  
26 *Diastat must be administered within a timeframe that a licensed*  
27 *medical person or a paramedic cannot reasonably be expected to*  
28 *respond and be available.*

29 (2)

1 (B) Failure to administer ~~the medication~~ *Diastat* in a timely  
2 manner can reasonably be expected to result in death or permanent  
3 physical injury to the pupil.

4 ~~(3) The medication~~

5 (C) *Diastat* and the procedure for ~~the administration of the~~  
6 ~~medication~~ *its administration* has been found to be safe from  
7 harmful side effects by competent personnel.

8 (e)

9 (b) It is the intent of the Legislature that individuals with  
10 exceptional needs and children with disabilities under the federal  
11 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101  
12 et seq.) and Section 504 of the federal Rehabilitation Act of 1973  
13 (29 U.S.C. Sec. 794) shall have a right to an appropriate  
14 educational opportunity to meet their unique needs, and that  
15 children suffering from seizures due to epilepsy have the right to  
16 appropriate programs and services that are designed to meet their  
17 unique needs. In order to meet that goal, it is the intent of the  
18 Legislature to authorize nurses to train and supervise employees  
19 of school districts and county offices of education to administer  
20 *Diastat* to children with epilepsy in the public schools. The  
21 American Academy of Pediatrics and the Epilepsy Foundation of  
22 America support training of school employees to administer *Diastat*  
23 and believe that *Diastat* may be safely and effectively administered  
24 by trained school employees. The Legislature further finds and  
25 declares that, in the absence of a credentialed school nurse or other  
26 licensed nurse onsite at the school, it is in the best interest of the  
27 health and safety of children to allow trained school employees to  
28 administer *Diastat* to pupils in public schools.

29 SEC. 2. Section 49414.7 is added to the Education Code, to  
30 read:

31 49414.7. (a) It is the intent of the Legislature that, whenever  
32 possible, *Diastat* should be administered by a school nurse who  
33 has been trained in its administration.

34 (b) Notwithstanding Sections 2052 and 2732 of the Business  
35 and Professions Code, in the absence of a credentialed school nurse  
36 or other licensed nurse onsite at the school, a school district may  
37 provide school employees with voluntary emergency medical  
38 training to provide emergency medical assistance to pupils with  
39 epilepsy suffering from seizures. A school employee with voluntary  
40 emergency medical training shall provide this emergency medical

1 assistance in accordance with the ~~standards~~ *guidelines* established  
2 pursuant to subdivision (k), and the performance instructions set  
3 forth by the licensed health care provider of the pupil. A school  
4 employee who does not volunteer or who has not been trained  
5 pursuant to subdivision (k) shall not be required to provide  
6 emergency medical assistance pursuant to this section.

7 (c) If a pupil with epilepsy has been prescribed Diastat by his  
8 or her health care provider, the pupil's parent or guardian may  
9 request the pupil's school to have one or more of its employees  
10 receive training pursuant to this section in the administration of  
11 Diastat in the event that the pupil suffers a seizure when a nurse  
12 is not available.

13 (d) Pursuant to Section 504 of the federal Rehabilitation Act of  
14 1973, as amended, (29 U.S.C. Sec. 794), upon receipt of the  
15 parent's or guardian's request, the school shall notify the parent  
16 or guardian that his or her child may qualify for services or  
17 accommodations, assist the parent or guardian with the exploration  
18 of that option, *including, but not limited to, the development of a*  
19 *seizure action plan in accordance with the parent's or guardian's*  
20 *direction*, and encourage the parent or guardian to adopt that option  
21 if it is determined that the child is eligible for a Section 504 plan.

22 (e) The school may ask the parent or guardian to sign a notice  
23 verifying that the parent or guardian was given information about  
24 Section 504 of the federal Rehabilitation Act of 1973, and that the  
25 parent or guardian understands that it is his or her right to request  
26 a Section 504 plan at any time.

27 (f) If the parent or guardian does not choose to have the pupil  
28 assessed for a Section 504 plan, the school may create an  
29 individualized health plan, seizure action plan, or other appropriate  
30 health plan designed to acknowledge and prepare for the child's  
31 health care needs in school. The plan may include the involvement  
32 of trained volunteer school employees.

33 (g) If a school decides to train school employees pursuant to  
34 this section, the school shall distribute an electronic notice to all  
35 staff that states all of the following:

36 (1) The notice is a request for volunteers to administer Diastat  
37 to a pupil experiencing a severe epileptic seizure, in the absence  
38 of a school nurse.

39 (2) Diastat is an FDA-approved, predosed, rectally administered  
40 gel that reduces the severity of epileptic seizures.

1 (3) A volunteer will receive training from a licensed health  
2 professional regarding the administration of Diastat.

3 (4) Any agreement by an employee to administer Diastat is  
4 voluntary, and no employee of the school or district shall directly  
5 or indirectly use or attempt to use his or her authority or influence  
6 for the purpose of intimidating, threatening, coercing, or attempting  
7 to intimidate, threaten, or coerce, any staff member who does not  
8 choose to volunteer.

9 (h) If there are no volunteers, then the school shall renotify the  
10 pupil's parent or guardian of the option to be assessed for services  
11 and accommodations guaranteed under Section 504 of the federal  
12 Rehabilitation Act of 1973.

13 (i) A school that chooses to participate pursuant to this section  
14 shall have in place a school plan that shall include, but not be  
15 limited to, all of the following:

16 (1) Identification of existing licensed staff within the district or  
17 region who could be trained in the administration of Diastat and  
18 could be available to respond to an emergency need to administer  
19 Diastat. The school shall consult with the school district or county  
20 office of education to obtain this information.

21 (2) Identification of pupils who may require the administration  
22 of Diastat.

23 (3) Written authorization from the parent or guardian for a  
24 nonmedical school employee to administer Diastat.

25 (4) The requirement that the parent or guardian notify the school  
26 if the pupil has had Diastat administered within the past four hours  
27 on a schoolday.

28 (5) Notification of the parent or guardian that Diastat has been  
29 administered.

30 (6) A written statement from the pupil's health care practitioner  
31 that shall include, but not be limited to, all of the following:

32 (A) The pupil's name.

33 (B) The name and purpose of the medication.

34 (C) The prescribed dosage.

35 (D) ~~The length of time the seizure may continue before~~ Detailed  
36 *seizure symptoms, including frequency, type, or length of seizures*  
37 *that identify when* the administration of Diastat becomes necessary.

38 (E) The method of administration.

39 (F) The frequency with which the medication may be  
40 administered.

1 (G) The circumstances under which the medication may be  
2 administered.

3 (H) Any potential adverse responses by the pupil and  
4 recommended mitigation actions, including when to call emergency  
5 services.

6 (I) A protocol for observing the pupil after a seizure, including,  
7 but not limited to, whether the pupil should rest in the school office,  
8 whether the pupil may return to class, and the length of time the  
9 pupil should be under direct observation.

10 (j) A school that chooses to allow volunteers to administer  
11 Diastat shall compensate a volunteer when the administration of  
12 Diastat and subsequent monitoring of a pupil requires a volunteer  
13 to work beyond his or her normally scheduled hours.

14 (k) (1) The Legislature encourages the Epilepsy Foundation of  
15 America to develop ~~performance standards~~ *guidelines* for the  
16 training and supervision of school employees in providing  
17 emergency medical assistance to pupils with epilepsy suffering  
18 from seizures. The ~~performance standards~~ *guidelines* may be  
19 developed in cooperation with the State Department of Education,  
20 the California School Nurses Organization, the California Medical  
21 Association, and the American Academy of Pediatrics. ~~Upon~~  
22 ~~development of the performance standards, the State Department~~  
23 ~~of Public Health may approve the performance standards for~~  
24 ~~distribution and make those standards available upon request.~~

25 (2) Training established pursuant to this subdivision shall  
26 include, but not be limited to, all of the following:

27 (A) Recognition and treatment of different types of seizures.

28 (B) Administration of Diastat.

29 (C) Basic emergency followup procedures, including, but not  
30 limited to, calling the emergency 911 telephone number and  
31 contacting the pupil's parent or guardian.

32 (D) Techniques and procedures to ensure pupil privacy.

33 (3) Training established pursuant to this subdivision shall be  
34 conducted by one or more of the following:

35 (A) A physician and surgeon.

36 (B) *A physician and surgeon's assistant.*

37 ~~(B)~~

38 (C) A credentialed school nurse.

39 ~~(C)~~

40 (D) A registered nurse.



1     ~~(D)~~

2     (E) A certificated public health nurse.

3     (4) Training provided in accordance with the ~~performance~~  
4 ~~standards manufacturer's instructions, the pupil's health care~~  
5 ~~provider's instructions, and guidelines~~ established pursuant to this  
6 section shall be deemed adequate training for purposes of this  
7 section.

8     (5) (A) A school employee shall notify the credentialed school  
9 nurse assigned to the school district if he or she administers Diastat  
10 pursuant to this section.

11     (B) If a credentialed school nurse is not assigned to the school  
12 district, the school employee shall notify the superintendent of the  
13 school district, or his or her designee, if he or she administers  
14 Diastat pursuant to this section.

15     (C) A school shall retain all records relating to the administration  
16 of Diastat while a pupil is under the supervision of school staff.

17     (6) The pupil's parent or guardian shall provide all materials  
18 necessary to administer Diastat, including the information described  
19 in paragraph (6) of subdivision (i). A school shall not be  
20 responsible for providing any of the necessary materials.

21     (I) For purposes of this section, "Diastat" means diazepam rectal  
22 gel, marketed as Diastat AcuDial, approved by the federal Food  
23 and Drug Administration for patients with epilepsy for the  
24 management of seizures.

25     (m) This section shall remain in effect only until January 1,  
26 2017, and as of that date is repealed, unless a later enacted statute,  
27 that is enacted before January 1, 2017, deletes or extends that date.

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## BILL ANALYSIS

SENATE HEALTH  
COMMITTEE ANALYSIS  
Senator Ed Hernandez, O.D., Chair

BILL NO: SB 161  
S  
AUTHOR: Huff  
B  
AMENDED: March 9, 2011  
HEARING DATE: April 6, 2011  
1  
CONSULTANT:  
6  
Trueworthy  
1

SUBJECT

Schools: emergency medical assistance: administration of  
epilepsy medication

SUMMARY

This bill would allow non-medical school personnel who undergo voluntary training to administer the drug Diastat to a pupil suffering an epileptic seizure.

CHANGES TO EXISTING LAW

## Existing federal law:

The Americans with Disabilities Act of 1990 prohibits discrimination on the basis of disability by employers, public accommodations, state and local governments, public and private transportation, and in telecommunications.

The Individuals with Disabilities Education Act (IDEA) governs Individualized Educational Programs (IEPs) and the special education process. IDEA guarantees children with disabilities a "free appropriate public education" (FAPE) in the least restrictive environment (LRE).

Section 504 of the Rehabilitation Act of 1973 (Section 504) provides federal financial assistance to state and local education agencies to guarantee special education and

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related services to eligible children with disabilities.

Requires school districts to provide FAPE to each qualified person with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the person's disability, which includes reasonable accommodations required for the management of chronic medical conditions.

## Existing state law:

Requires the governing board of any school district to give diligent care to the health and physical development of students, which may include employing properly certified persons.

Provides that each student who is required to take prescribed medication by a physician, may be assisted by the school nurse or other designated school personnel if the school district receives a written statement from the physician detailing the method, amount, and time schedules by which the medication is to be taken, and a written statement from the parent or guardian of the student, indicating the desire that the school district assist the pupil in the matters set forth in the physician's statement.

Provides that no school district, officer of any school district, school principal, physician, or hospital treating a student shall be held liable for the reasonable treatment of a child without the consent of a parent or guardian, when the child is ill or injured during regular school hours, requires reasonable medical treatment, and the parent or guardian cannot be reached, unless the parent or guardian has previously filed with the school district a

written objection to any medical treatment other than first aid.

Authorizes non-medical school personnel to administer the following medication to a student in an emergency, after receiving specified training:

Emergency epinephrine auto-injectors. A prescription for an auto-injector for a specific

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student is not required; the prescription is for the school.

Glucagon may be administered to students with diabetes suffering from severe hypoglycemia in the absence of a credentialed school nurse or other licensed nurse onsite at the school.

Authorizes non-medical school personnel to assist or administer medication to a student on a routine, non-emergency basis the following:

Assisting in the administration of prescribed medication, or in the self-administration of prescription auto-injectable epinephrine.

Assisting in administration of prescribed medication or in the self-administration of prescription inhaled asthma medication.

Assisting if the health care provider gives a written statement with specific information, such as the medication the pupil is to take, the dosage, and the period of time during which the medication is to be taken, and if the parent provides a written statement initiating a request to have the medication administered or otherwise assisted in the administration of the medication.

Sets forth the scope of practice for nursing through the Nursing Practice Act, which includes the administration of medication, and prohibits any person from engaging in the practice of nursing without a license.

This bill:

Makes various legislative findings and declarations, including the declaration that whenever possible, Diastat should be administered by a school nurse who has been trained in its administration.

Authorizes a school district to provide school employees with voluntary medical training to provide emergency medical assistance to students suffering from an epileptic seizure.

Requires a school employee with voluntary emergency medical training to provide this emergency medical assistance in accordance with guidelines that the Epilepsy Foundation of America is encouraged to develop.

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The guidelines may be developed in coordination with the State Department of Education, the California Nurses Organization, the California Medical Association, and the American Academy of Pediatrics.

Prohibits a school employee, who does not volunteer or who has not been trained, from being required to provide emergency medical assistance.

Authorizes a parent or guardian of a pupil with epilepsy who has been prescribed Diastat to request the school have one or more of its employees receive training in the administration of Diastat.

Requires, upon receipt of the parent's or guardian's request, the school to notify the parent or guardian that his or her child may qualify for services or accommodations, pursuant to Section 504. Requires the school to assist in the exploration of that option.

Authorizes a school to ask the parent or guardian to sign a notice verifying they were given information about Section 504 and they understand it is their right to request a Section 504 plan at any time.

Authorizes a school to create an individualized health plan, seizure action plan, or other appropriate health plan

designed to acknowledge and prepare for the child's health care needs in school if the parent chooses to not have the pupil assessed for a Section 504 plan. The plan may include the involvement of trained volunteer school employees.

Authorizes a school that decides to train voluntary school employees to distribute an electronic notice to all staff that states all of the following:

1. The notice is a request for volunteers to administer Diastat to a pupil experiencing a severe epileptic seizure, in the absence of a school nurse.
2. Diastat is an FDA-approved, pre-dosed, rectally-administered gel that reduces the severity of epileptic seizures.
3. A volunteer will receive training from a licensed health professional regarding the administration of Diastat.
4. Any agreement by an employee to administer Diastat

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is voluntary, and no employee of the school or district shall directly or indirectly use or attempt to use his or her authority or influence for the purpose of intimidating, threatening, coercing, or attempting to intimidate, threaten, or coerce, any staff member who does not choose to volunteer.

Requires a school to re-notify the pupil's parent or guardian of the Section 504 options if there are no volunteers.

Encourages the Epilepsy Foundation to develop guidelines for training and supervision.

Requires a school that chooses to train school employees to have in place a school plan that includes:

1. Identification of existing licensed staff within the district or region who could be trained in the administration of Diastat and could be available to respond to an emergency need to administer Diastat.
2. Identification of pupils who may require the administration of Diastat.
3. Written authorization from the parent or guardian for a non-medical school employee to administer Diastat.
4. A requirement that the parent or guardian notify the school if the pupil has had Diastat administered within the past four hours on a school day.
5. Notification to the parent or guardian that Diastat has been administered.
6. A written statement from the pupil's health care practitioner that shall include all of the following:
  - a) The pupil's name.
  - b) The name and purpose of the medication.
  - c) The prescribed dosage.
  - d) Detailed seizure symptoms, including frequency, type, or length of seizures that identify when the administration of Diastat becomes necessary.
  - e) The method of administration.
  - f) The frequency with which the medication may be administered.
  - g) The circumstances under which the medication may be administered.
  - h) Any potential adverse responses by the

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- pupil and recommended actions, including when to call emergency services.
- i) A protocol for observing the pupil after a seizure.

Requires a school to compensate a volunteer when the administration of Diastat and subsequent monitoring of a pupil requires the person to work beyond his or her normally scheduled hours.

Requires the training to include the following:

1. Recognition and treatment of different types of seizures.
2. Administration of Diastat.
3. Basic emergency follow-up procedures including, calling 911 and contacting the pupil's parent or guardian.

4. Techniques and procedures to ensure pupil privacy.

Requires training to be conducted by one or more of the following:

1. A physician and surgeon.
2. A physician and surgeon's assistant.
3. A credentialed school nurse.
4. A registered nurse.
5. A certificated public health nurse.

Deems training provided in accordance with the manufacturer's instructions, the pupil's health care provider's instructions and guidelines as adequate training.

Requires a school employee to notify the credentialed school nurse assigned to the school district if Diastat is administered. If a credentialed school nurse is not assigned to the school district, the school employee shall notify the superintendent of the school district, or his or her designee.

Requires a school to retain all records relating to the administration of Diastat.

Requires the pupil's parent or guardian to provide all materials necessary to administer Diastat.

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Defines "Diastat" as a diazepam rectal gel, marketed as Diastat AcuDial, approved by the federal Food and Drug Administration for patients with epilepsy for the management of seizures.

Sunsetts the provisions of this bill on January 1, 2017,

#### FISCAL IMPACT

This bill has not been analyzed by a fiscal committee.

#### BACKGROUND AND DISCUSSION

According to the author, uncontrolled seizures can damage a child's developing brain and can impact academic performance, memory, learning, and result in social-emotional challenges. Some children with epilepsy are susceptible to prolonged seizures and require access to a life-saving emergency medication. Diastat Acudial, a pre-dosed preparation of diazepam gel, is the standard out-of-hospital treatment for prolonged seizures. Diastat is a FDA-approved emergency medication and is a safe and effective treatment, specifically designed to be administered by people without medical training.

The author states that for over 10 years it was common in California schools to have nurses, or where unavailable, trained non-medical personnel to administer the doctor-prescribed Diastat in an emergency situation to a student when suffering a severe, possibly life-threatening seizure. In October 2009, however, a nursing education consultant to the Board of Registered Nursing (BRN) advised that there is no provision in the Nursing Practice Act for unlicensed school personnel to administer Diastat. The BRN has further stated that absent an authorizing statute, school nurses cannot train or supervise unlicensed personnel to administer Diastat. As a consequence, nurses are refusing to train school personnel, and schools are reluctant to have staff, even those already trained, administer Diastat. Some schools are telling parents they must be available to come to the school to administer Diastat or are calling 911 in an emergency. The author contends that either of these solutions results in delays

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in treatment that places the child in danger of serious injury, or worse. SB 161 will allow schools to provide the fastest, safest and most effective way of protecting the health and safety of children with epilepsy in schools.

Epilepsy background and statistics  
Epilepsy is defined as a chronic neurological condition in

which the individual is susceptible to several seizures. A seizure is a sudden, temporary interruption of the normal electrical/chemical activity in the brain, resulting in a change in sensation, awareness or behavior. A seizure can range from a brief disruption of senses, muscle spasms, or odd sensations to short periods of unconsciousness and convulsions. Currently there is no known cure for epilepsy.

Epilepsy is a complex condition and there are many types of seizures associated with epilepsy. The type of seizure a person has depends on a variety of things, such as the part of the brain affected and the underlying cause of the seizure. The type of medicine individuals with epilepsy take depends on the type of seizures.

Almost 3 million people in the U.S. have some form of epilepsy. About 200,000 new cases of seizure disorders and epilepsy are diagnosed each year. According to the Epilepsy Foundation, as many as 325,000 school-age children, ages 5-14, have epilepsy. Epilepsy affects over 90,000 children across California.

**Diastat**  
Diastat --diazepam rectal gel and its trademark administration system-- was first approved for use by the FDA in the United States in 1997 as a treatment for breakthrough seizures in adults and children 2 years old and over. This is the only FDA-approved, at-home medication for the treatment of cluster seizures. Diastat was specifically developed to be administered by people without medical training and is considered the fastest, safest and most effective way to address epileptic seizures. It is often prescribed for people who have experienced acute repetitive seizures, or "cluster" seizures. Dosages are determined on an individual basis, depending upon the condition to be treated, the severity of symptoms, the body weight of the patient, and any comorbidity conditions the patient may have.

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Diastat is intended to be kept handy so that a caregiver can attempt to stop the seizures by administering the drug relatively quickly. Diastat is a gel formulation of Diazepam (valium) that is administered rectally. The delivery system includes a plastic applicator with a flexible, molded tip and is provided in fixed unit-doses of 5, 10, 15 and 20 mg. A pharmacist simply dials the syringe to the physician's prescribed dosage before it is dispensed to the patient.

The most common side effect is sleepiness. Other less frequent side effects include skin rash, dizziness, pain, headache, stuffy nose, abdominal pain, nervousness, diarrhea, feeling unsteady or clumsy, and wheezing.

Most seizure patients, no matter how well-managed through maintenance medication, will likely experience breakthrough seizures throughout their lifetime. Possibly as many as 35 percent of patients on anti-seizure medications may not be adequately controlled. Between 50,000 and 200,000 generalized convulsive status epilepticus seizures occur every year in the United States, with an overall mortality rate of 20 percent. Additional statistics show that status seizures lasting more than one hour have a mortality rate of 32 percent, compared with 2.7 percent for seizures of shorter duration.

**Health care needs in schools**  
In classrooms throughout California, there are numerous children with special medical needs, including gastronomy feeding tubes, oxygen administration, tracheal suctioning and monitoring for seizures. California's nurse-to-pupil ratio is approximately 1:2,200. According to the California Basic Educational Data System (CBEDS), about one-half of school districts do not have a school nurse.

**Federal laws and 504 plans**  
Two federal anti-discrimination statutes, Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (ADA), together establish rights for eligible students in California's public schools. They serve to protect students from discrimination based upon their disability. In general, a student will be determined to have a disability

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under Section 504 if he/she has a mental or physical impairment that substantially limits one or more major life activities, such as eating, breathing, caring for oneself, performing manual tasks, hearing, speaking, walking, and learning.

Section 504 requires school districts to provide FAPE to each qualified pupil, regardless of the nature or severity of the disability. An appropriate education may comprise of education in regular classes, education in regular classes with the use of related aids and services, or special education and related services in separate classrooms for all or portions of the school day.

A "504 plan" differs from an individualized education program (IEP) in that an IEP provides for specialized instruction while a 504 plan provides for accommodation due to a physical or mental impairment that does not require specialized instruction.

The Nursing Practice Act and the Bureau of Registered Nursing (BRN)  
The Nursing Practice Act (NPA) specifies that medication administration is a nursing function that may not be performed by unlicensed personnel unless expressly authorized by statute.

The BRN has issued a legal opinion stating the NPA does not permit unlicensed school personnel to administer Diastat and the administration of Diastat constitutes the practice of nursing. The legal opinion further states that the NPA does not permit a nurse to train unlicensed school personnel knowing that the purpose for the training is to enable the administration of Diastat.

Exceptions to the Nursing Practices Act  
Current law authorizes non-medical school personnel to administer emergency epinephrine auto-injectors in an emergency after receiving specified training. Current law also allows Glucagon to be administered to students with diabetes suffering from severe hypoglycemia in the absence of a credentialed school nurse or other licensed nurse onsite at the school.

The NPA does not prohibit nursing services in the case of

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an emergency.

Lawsuit specific to the administration of insulin.  
In 2005, the American Diabetes Association (ADA) sued the State of California (K.C., et al. vs. Jack O'Connell, et al) asking the court to compel public school officials to comply with federal law by providing the assistance that California students with diabetes require to manage their diabetes during the school day. The California Department of Education (CDE) entered into a settlement with them and, as a part of the settlement, CDE issued a legal advisory that declared unlicensed but adequately trained school employees may administer insulin under the treating physician's orders and in accordance with the student's Section 504 Plan or IEP, in the absence of available licensed health care professionals.

Several nursing groups sued to overturn this portion of the legal advisory (American Nurses Assoc. v. Jack O'Connell), and in November 2008, a trial court judge ruled in their favor. Following the court ruling, ADA and CDE filed an appeal of the court ruling, and in April 2009, a California Court of Appeals ruled that the lower court's ruling is "stayed" during the appeal. While this is not a decision on the merits of the case, it does mean that the lower court's ruling has no effect until the appeal is decided.

Therefore, the CDE may continue to advise districts that non-medical school personnel are authorized to administer insulin.

Related bills  
SB 65 (Strickland) would authorize any pupil who has been diagnosed with cystic fibrosis and is required to take, during the regular school day, medication prescribed for him or her by a physician or surgeon, to be assisted by the school nurse or other designated school personnel, or may carry and self-administer prescription pancreatic enzymes if the school district receives specified written statements. SB 65 is pending before the Senate Education Committee.

Prior legislation  
SB 1051 (Huff) of 2010 was very similar to this bill. SB  
1051 was held on the Senate Appropriations Committee's

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suspense file.

AB 1802 (Hall) of 2010 would authorize a parent or guardian of a pupil with diabetes to designate one or more school employees as parent-designated school employees for the purpose of administering insulin to the pupil as necessary during the regular school day when a credentialed school nurse or other health care professional is not immediately available onsite at the school. Failed passage in Assembly Business, Professions, and Consumer Protection Committee.

SB 1200 (Leno) of 2010 would have required the Department of Managed Health Care and the Insurance Commissioner to develop regulations to ensure timeliness of care for school age children who must receive medically necessary services during school hours. Failed passage in the Assembly Appropriations Committee.

AB 2454 (Torlakson) of 2010 would have required the governing board of a school district to employ at least one school nurse, registered nurse, or licensed vocational nurse for every 750 pupils on and after July 1, 2020. The bill would have required registered nurses and licensed vocational nurses to provide health care services to pupils under the supervision of a school nurse. Failed passage in Assembly Appropriations Committee.

AB 1430 (Swanson) of 2009 would have required, with certain exceptions, that any medication that is administered to a pupil who is required to take, during the regular school day, medication prescribed for him or her by a physician or surgeon be administered by a health care professional operating within the scope of his or her practice. Failed passage in Assembly Business and Professions Committee.

AB 426 (Hall) of 2009 would have required the Department of Education, in consultation with specified entities, to recommend to the Legislature ways to address specific health-related needs of pupils on school campuses, including but not limited to, diabetes, asthma and obesity-related diseases. AB 426 was never heard.

AB 942 (Leno) Chapter 684, Statutes of 2003, authorizes

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each school district to provide voluntary emergency medical training to school personnel, as defined, to administer emergency medical assistance to pupils with diabetes suffering from severe hypoglycemia, if certain performance standards for training and supervision are developed by the American Diabetes Association in cooperation with several other entities for approval and distribution by the State Department of Health Services' Diabetes Control Program, in the absence of a credentialed school nurse or other licensed nurse.

AB 559 (Wiggins), Chapter 458, Statutes of 2001, authorizes a school district or county office of education to provide emergency epinephrine auto-injectors to trained personnel, and authorizes the trained personnel to utilize those epinephrine auto-injectors to provide emergency medical aid to persons suffering from an anaphylactic reaction.

#### Arguments in support

Supporters write that Diastat is a safe and effective drug and allowing trained school personnel to administer Diastat could save an epileptic child from very serious injury. The Health Officers Association of California (HOAC) writes that without SB 161, school personnel would have to wait for the child's parent or an ambulance to arrive in order for the drug to be administered. Epilepsy California writes a student suffering from prolonged seizures that is prescribed and yet denied access to Diastat risks permanent brain damage or death. After five minutes, seizures are life threatening. The California Association of Suburban School Districts writes that Diastat is the first and only FDA-approved, acute layperson-administered medication and



is the best option for providing a safe educational environment for students.

Disability Rights of California (DRC) contends SB 161 is an important step to providing children with epilepsy with a free appropriate education. DRC writes access to medication is important for children with disabilities who need it to be able to receive an education in the least restrictive environment with their peers. Riverside Unified School District writes SB 161 is a critical component of the overall medical and welfare care the district provides to special needs students.

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The Riverside County School Superintendents' Association writes that it is the unfortunate fiscal reality that we will not have nurses in our schools and we must adapt to that fiscal reality in a manner that provides the most health protection to the students.

Supporters state that it has been common practice for over 10 years for trained non-medical personnel to have the authority to administer doctor-prescribed Diastat to a student suffering a severe and possibly life threatening seizure. Supporters further contend that SB 161 is patterned after two existing laws which allow non-medical school personnel to administer drugs, Epinephrine and Glucagon. Supporters argue these medications must also be given in a specified and extremely short amount of time from the onset of the episode. Supporters argue Diastat, like Epinephrine and Glucagon, is a life-saving measure. If Diastat is administered incorrectly, the medication is not life-threatening, but a significant delay in receiving treatment can be.

Support if amended

The California Association of Joint Powers Authorities (CAJPA) writes that SB 161 does not contain needed "Good Samaritan" liability immunity for the school employee or the school who agrees to participate in the volunteer program to help epileptic students in need. In these litigious times, CAJPA believes that adding this important liability protection is critical to the ultimate success of the proposed program. Otherwise, volunteers and schools will be very reluctant to agree to take on such important duties and responsibilities as proposed in SB 161.

Arguments in opposition

A coalition of union groups including, the California Teachers Association, California School Employees Association, American Nurses Association-California, California Nurses Association, California Labor Federation, Service Employees International Union - Nurses Alliance of California, and the California Federation of Teachers are opposed to SB 161 writing that Diastat is a dangerous medication that must be administered rectally to control seizures. The coalition writes that because a seizure is unpredictable, providing for any level of privacy is nearly impossible. The coalition further argues that school

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employees face legal liability if something goes wrong as school districts generally do not cover punitive damages. Opponents also argue that SB 161 does not require 911 to be called and in medical emergencies, a 911 call must be required.

The coalition supports having licensed, appropriately trained health care personnel provide the high quality care that is required to assure that not only children with disabilities but all school children have access to a free, fair and appropriate education. The United Nurses Association of California-Union of Health Care Professionals writes in opposition to SB 161, arguing the bill will "deskill the role of school nurses" at a risk to children.

Opponents further argue that if an employee is named in a lawsuit, they will have to go to court to defend themselves and there are no protections against punitive damages or criminal prosecution.

The California School Employees Association (CSEA) argues

that training will be inadequate if provided at all, as the bill does not provide funding for any training. CSEA writes that if a Registered Nurse is not available to perform this duty, Licensed Vocational Nurses (LVNs) can and should be used as they are appropriately licensed and have the skills and ability to help epileptic students.

#### COMMENTS

- 1) Amendments in Education Committee. The following amendments were agreed to in the Senate Education Committee to be taken in the Senate Health Committee:
- a) Clarification that a school is required to provide information about the possibility of eligibility for a 504 plan to a parent once the parent requests the school to have an employee receive training in the administration of Diastat.
  - b) Delete reference to "a physician and surgeon's

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assistant" and only reference "physician assistant" as those who may provide training to school employees. There is no such position as a surgeon's assistant.

- 2) Coercion issue. Concern has been raised that employees will face coercion and possible retaliation under SB 161. While Section 49414.7 (b) of the bill states that a school employee who does not volunteer or who has not been trained shall not be required to provide emergency medical assistance, staff recommends the following amendments to clarify this issue:

- i) Prohibit a face-to-face request for volunteers or face-to-face follow-up requesting volunteers.
- ii) State that no response to the notice is required from school employees unless they are affirmatively volunteering.
- iii) Add language to allow a school employee who has volunteered to opt-out by submitting written notification.

- 3) Volunteers. Staff recommends adding language in subsection (f) of the bill to encourage schools to first utilize LVNs prior to asking school employees to volunteer for training.

4) Definitions.

- a) Concern has been raised about who the bill applies to. Staff recommends adding language to clarify the term "school employee" to mean any one or more employees of a school district who volunteer to be trained to administer emergency medical assistance to a pupil suffering an epileptic seizure.
- b) Staff recommends defining "emergency medical assistance" to mean the administration of Diastat to a pupil suffering from an epileptic seizure.
- c) Concern has been raised about using a brand name drug in legislation. Staff recommends using a broader definition and not the brand name drug.

- 5) Liability Concerns. Concern has been raised that employees will not be afforded the same protections they

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currently have because the employee is volunteering. While Section 49414.7(j) of the bill states that a school that chooses to allow volunteers to administer Diastat shall compensate a volunteer when the administration of Diastat and subsequent monitoring of a pupil requires a volunteer to work beyond his or her normally scheduled hours, staff recommends adding language to clarify that any actions undertaken as part of this section is considered to be within the current scope of their employment.

- 6) School Plan. Section 49414.7(i) outlines the requirements

a school plan must include for school's choosing to participate. Staff recommends adding language to require a 911 call in the school plan. Training requirements outlined in (k)(2)(C) of the bill already include calling 911 as basic emergency follow-up procedures.

7) Training.

- a) Section 49414.7 (k)(2) describes what the training shall include. Staff recommends adding language to require written materials covering the information described in this subsection to also be included and to require a school to retain the written materials.
- b) Section 49414.7 (k) in subsections (1), (2), (3), and (4) outline the training components. Staff recommends adding language to require documentation of a completed training by a school employee be maintained by both the school and school district.
- c) Section 49414.7 (k)(1) only encourages the Epilepsy Foundation of America to develop guidelines for training and supervision. The language is silent on what will occur in the absence of such development.
  - i) Staff recommends adding language to clarify that until such training guidelines are established and approved, the bill shall not take effect.
  - ii) Staff also recommends adding language to require the Department of Education to approve any guidelines used for training.
- d) Staff recommends adding language to require school employees who have volunteered for training to be

□

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required to receive updated training on an annual basis.

- e) Staff recommends adding language to clarify that a volunteer must receive training prior to administering Diastat in Section 49414.7(g)(3) of the bill.

POSITIONS

Support: Association of Regional Center Agencies  
The California Association of Joint Powers  
Authorities (If Amended)  
California Association of School Business  
Officials  
California Association of Suburban School  
Districts  
California School Boards Association  
Democrats for Education Reform  
Disability Rights California  
Epilepsy Foundation, California  
Health Officers Association of California  
Humboldt County Office of Education  
Kern County Superintendent of Schools  
Los Angeles County Office of Education  
Los Angeles Unified School district  
Orange County Department of Education  
Riverside County School Superintendents'  
Association  
Riverside Unified School District  
Saddleback Valley Unified School District  
San Bernardino County District Advocates for  
Better Schools  
Small School Districts' Association  
35 individuals

Oppose: American Nurses Association-California,  
California Labor Federation  
The California Federation of Teachers  
California Association for Nurse Practitioners  
California Nurses Association  
California School Employees Association  
California School Nurses Organization  
California School Employees Association  
California Teachers Association

□

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Laborers International Union of North America,  
Local 777

Service Employees International Union-Nurses  
Alliance of California  
United Nurses Associations of CA-Union of Health  
Care Professionals  
United Teachers Los Angeles

-- END --

## LEGISLATIVE AGENDA ITEM DETAIL SHEET

**BILL NUMBER/ISSUE:** Assembly Bill (AB) 1205- certified applied behavior analysis

**BACKGROUND:** Existing law creates and regulates the certification and licensure of various professions, such as therapists and social workers.

Applied behavior analysis (ABA) is a specific technique used to change behavior. During the past decade, there has been increasing evidence that ABA therapy is an important and valuable therapeutic intervention in the treatment of medical conditions such as autism and autism spectrum disorders (ASDs).

Presently, many families and people diagnosed with an autism spectrum disorder have difficulty obtaining ABA through their health insurance plans. Frequently, insurance companies cite, as the reason for denial, that ABA practitioners are not certified. This bill may be the first step to recognizing ABA and ABA practitioners as part of a certified profession (with a code of ethics, identified best practices, etc.) and thus may someday lead to greater ease in obtaining ABA from health insurers.

In September 2008, the California Department of Education proposed regulations which required ABA analysts and assistants to have at least 12 semester units in ABA training in order to provide ABA services to school-aged children. Significant opposition arose on the basis that the regulations unduly narrowed the definition of who could provide ABA services (thus limiting the availability of ABA services) and the regulations were not changed.

**ANALYSIS/DISCUSSION:** AB 1205 creates new two new certified professions – applied behavior analyst and assistant applied behavior analyst – and creates requirements that must be met to practice these professions.

As proposed in AB 1205, the requirements for a certified applied behavior analyst license would be:

- possess a bachelor or master's degree;
- complete 225 hours of classroom instruction;
- complete 1,500 hours of fieldwork under the supervision of a certified behavior analyst; and,
- take and successfully pass an exam administered by the Behavior Analyst Certification Board (or another nonprofit approved by the Board of Behavioral Sciences).

As proposed in this bill, the requirements for a certified assistant applied behavior analyst license are:

- possess a bachelor or master's degree;
- complete 135 hours of classroom instruction;
- complete 1,000 hours of fieldwork under the supervision of a certified behavior analyst; and,
- take and successfully pass an exam administered by the Behavior Analyst Certification Board (or another nonprofit approved by the Board of Behavioral Sciences).

Under AB 1205 the services a certified applied behavior analyst may perform would be:

- design, implement, and evaluate systematic instructional and environmental modifications to produce socially significant improvements in human behavior of individuals or groups;
- apply principles, methods, and procedures of operant and responding learning;
- utilize contextual factors, establishing operations, antecedent stimuli, position reinforcement, and other consequences to help people develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions;
- assess functional relations between behavioral and environmental factors;
- apply interventions based on scientific research and the direct observation and measurement of behavior and environment; and,
- the practice of applied behavior analysis excludes the practice of psychological testing, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, and long-term counseling.

A certified assistant applied behavior analyst may provide these services under the supervision of a certified applied behavior analyst.

The Board of Behavioral Sciences is responsible for administration and enforcement of these provisions.

**COUNCIL STRATEGIC PLAN OBJECTIVE:** Shape public policy that positively impacts Californians with developmental disabilities and their families.

**PRIOR COUNCIL ACTIVITY:** None

**RECOMMENDATION(S):** Watch AB 1205. Although one could argue this bill creates the framework that may eventually require insurance carriers to cover ABA treatment, it could also unduly narrow the definition of who may provide ABA services (and thus limit the availability of services). Because of this and the probable changes that will be made to this bill, it is recommended that the Legislative and Public Policy Committee take a watch position.

**ATTACHMENT(S):** AB 1205

**PREPARED:** Christofer Arroyo, March 30, 2011





**ASSEMBLY BILL**

**No. 1205**

---

**Introduced by Assembly Member Bill Berryhill**

February 18, 2011

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An act to amend Sections 4990.02, 4990.12, 4990.18, 4990.30, and 4990.38 of, and to add Chapter 5.2 (commencing with Section 2529.7.1) to Division 2 of, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1205, as introduced, Bill Berryhill. Certified applied behavior analysts.

Existing law provides for the licensure and regulation of various healing arts professions and vocations, including, but not limited to, marriage and family therapists, licensed educational psychologists, social workers, and licensed professional clinical counselors by the Board of Behavioral Sciences.

This bill would prohibit a person from holding himself or herself out to be a certified applied behavior analyst or a certified assistant applied behavior analyst unless licensed by the Board of Behavioral Sciences. The bill would require the board to issue a license to a person who meets certain educational requirements and passes an examination administered by, and is certified by, the Behavior Analyst Certification Board, a nonprofit corporation, or another similar entity approved by the board. The bill would describe the services that may be provided by a certified applied behavior analyst and a certified assistant applied behavior analyst, subject to specified supervision. The bill would authorize the board to regulate these licensees and to enforce these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Chapter 5.2 (commencing with Section 2529.7.1)  
2     is added to Division 2 of the Business and Professions Code, to  
3     read:

4  
5           CHAPTER 5.2. CERTIFIED APPLIED BEHAVIOR ANALYSTS  
6

7     2529.7.1. The Board of Behavioral Sciences shall administer  
8     and enforce the provisions of this chapter. For the purposes of this  
9     chapter, it shall be designated as the board.

10    2529.7.2. No person shall hold himself or herself out to be a  
11    certified applied behavior analyst unless the person is licensed by  
12    the board pursuant to this chapter.

13    2529.7.3. The board shall issue a certified applied behavior  
14    analyst license to an applicant who meets all of the following  
15    requirements:

16    (a) An applicant for examination shall, at a minimum, meet the  
17    following requirements:

18    (1) Possess a baccalaureate and a master's degree from any of  
19    the following:

20    (A) A United States or Canadian institution of higher education  
21    fully or provisionally accredited by a regional, state, provincial,  
22    or national accrediting body.

23    (B) An institution of higher education located outside the United  
24    States or Canada that, at the time the applicant was enrolled and  
25    at the time the applicant graduated, maintained a standard of  
26    training equivalent to the standards of training of those institutions  
27    accredited in the United States.

28    (2) Complete 225 classroom hours of related graduate level  
29    instruction.

30    (3) Complete 1,500 hours of supervised independent fieldwork  
31    under the supervision of a certified applied behavior analyst or  
32    initially, until January 1, 2013, under the supervision of a person  
33    who otherwise meets all of the requirements for certification.

34    (A) An applicant must be supervised at least 75 hours.

1 (B) Appropriate supervised independent fieldwork activities  
2 include all of the following:

3 (i) Conducting assessment activities related to the need for  
4 behavioral interventions.

5 (ii) Designing, implementing, and monitoring behavior analysis  
6 programs for clients.

7 (iii) Overseeing the implementation of behavior analysis  
8 programs by others.

9 (iv) Other activities normally performed by a behavior analyst  
10 that are directly related to behavior analysis, such as, but not  
11 limited to, attending planning meetings regarding the behavior  
12 analysis program, researching the literature related to the program,  
13 and talking to individuals about the program.

14 (b) An applicant for examination may, subject to approval by  
15 the board, take the examination if the applicant can demonstrate  
16 the equivalent completion of the requirements in subdivision (a).

17 (c) Has successfully passed an examination administered by the  
18 Behavior Analyst Certification Board, a nonprofit corporation  
19 pursuant to Section 501(c)(3) of the Internal Revenue Code, or  
20 another similar entity approved by the board.

21 (d) Is certified by the Behavior Analyst Certification Board, a  
22 nonprofit corporation pursuant to Section 501(c)(3) of the Internal  
23 Revenue Code, or another similar entity approved by the board.

24 2529.7.4. No person shall hold himself or herself out to be a  
25 certified assistant applied behavior analyst unless the person is  
26 licensed by the board pursuant to this chapter.

27 2529.7.5. The board shall issue a certified assistant applied  
28 behavior analyst license to an applicant who meets all of the  
29 following requirements:

30 (a) An applicant for examination shall, at a minimum, meet the  
31 following requirements:

32 (1) Possess a baccalaureate and a master's degree from any of  
33 the following:

34 (A) A United States or Canadian institution of higher education  
35 fully or provisionally accredited by a regional, state, provincial,  
36 or national accrediting body.

37 (B) An institution of higher education located outside the United  
38 States or Canada that, at the time the applicant was enrolled and  
39 at the time the applicant graduated, maintained a standard of

1 training equivalent to the standards of training of those institutions  
2 accredited in the United States.

3 (2) Complete 135 classroom hours of related instruction through  
4 any of the following:

5 (A) College or university courses in behavior analysis, that are  
6 taken from an institution that meets either of the requirements  
7 described in paragraph (1) of subdivision (b).

8 (B) Noncollege or university courses offered by an educational  
9 institution and approved for this purpose.

10 (C) A combination of college or university courses.

11 (3) Complete 1,000 hours of supervised independent fieldwork  
12 under the supervision of a certified applied behavior analyst or  
13 initially, until January 1, 2013, under the supervision of a person  
14 who otherwise meets all of the requirements for certification.

15 (A) An applicant must be supervised at least 50 hours.

16 (B) Appropriate supervised independent fieldwork activities  
17 include all of the following:

18 (i) Conducting assessment activities related to the need for  
19 behavioral interventions.

20 (ii) Designing, implementing, and monitoring behavior analysis  
21 programs for clients.

22 (iii) Overseeing the implementation of behavior analysis  
23 programs by others.

24 (iv) Other activities normally performed by a behavior analyst  
25 that are directly related to behavior analysis, such as, but not  
26 limited to, attending planning meetings regarding the behavior  
27 analysis program, researching the literature related to the program,  
28 and talking to individuals about the program.

29 (b) An applicant for examination may, subject to approval by  
30 the board, take the examination if the applicant can demonstrate  
31 the equivalent completion of the requirements in subdivision (a).

32 (c) Has successfully passed an examination administered by the  
33 Behavior Analyst Certification Board, a nonprofit corporation  
34 pursuant to Section 501(c)(3) of the Internal Revenue Code, or  
35 another similar entity approved by the board.

36 (d) Is certified by the Behavior Analyst Certification Board, a  
37 nonprofit corporation pursuant to Section 501(c)(3) of the Internal  
38 Revenue Code, or another similar entity approved by the board.

39 2529.7.6. (a) A certified applied behavior analyst may provide  
40 all of the following services:

1 (1) Design, implement, and evaluate systematic instructional  
2 and environmental modifications to produce socially significant  
3 improvements in human behavior of individuals or groups.

4 (2) Apply principles, methods, and procedures of operant and  
5 responding learning.

6 (3) Utilize contextual factors, establishing operations, antecedent  
7 stimuli, position reinforcement, and other consequences to help  
8 people develop new behaviors, increase or decrease existing  
9 behaviors, and emit behaviors under specific environmental  
10 conditions.

11 (4) Assess functional relations between behavioral and  
12 environmental factors.

13 (5) Apply interventions based on scientific research and the  
14 direct observation and measurement of behavior and environment.

15 (6) The practice of applied behavior analysis excludes the  
16 practice of psychological testing, neuropsychology, psychotherapy,  
17 cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, and  
18 long-term counseling.

19 (b) A certified applied assistant behavior analyst may provide  
20 the services in subdivision (a) under the supervision of a certified  
21 applied behavior analyst.

22 SEC. 2. Section 4990.02 of the Business and Professions Code  
23 is amended to read:

24 4990.02. "Board," as used in this chapter, *Chapter 5.2*  
25 (*commencing with Section 2529.7.1*), Chapter 13 (*commencing*  
26 *with Section 4980*), Chapter 13.5 (*commencing with Section*  
27 *4989.10*), Chapter 14 (*commencing with Section 4991*), and  
28 Chapter 16 (*commencing with Section 4999.10*) means the Board  
29 of Behavioral Sciences.

30 SEC. 3. Section 4990.12 of the Business and Professions Code  
31 is amended to read:

32 4990.12. The duty of administering and enforcing this chapter,  
33 *Chapter 5.2 (commencing with Section 2529.7.1)*, Chapter 13  
34 (*commencing with Section 4980*), Chapter 13.5 (*commencing with*  
35 *Section 4989.10*), Chapter 14 (*commencing with Section 4991*),  
36 and Chapter 16 (*commencing with Section 4999.10*) is vested in  
37 the board and the executive officer subject to, and under the  
38 direction of, the board. In the performance of this duty, the board  
39 and the executive officer have all the powers and are subject to all  
40 the responsibilities vested in, and imposed upon, the head of a

1 department by Chapter 2 (commencing with Section 11150) of  
2 Part 1 of Division 3 of Title 2 of the Government Code.

3 SEC. 4. Section 4990.18 of the Business and Professions Code  
4 is amended to read:

5 4990.18. It is the intent of the Legislature that the board employ  
6 its resources for each and all of the following functions:

7 (a) The licensure of *certified applied behavior analysts*, *certified*  
8 *assistant applied behavior analysts*, marriage and family therapists,  
9 clinical social workers, professional clinical counselors, and  
10 educational psychologists.

11 (b) The development and administration of licensure  
12 examinations and examination procedures consistent with  
13 prevailing standards for the validation and use of licensing and  
14 certification tests. Examinations shall measure knowledge and  
15 abilities demonstrably important to the safe, effective practice of  
16 the profession.

17 (c) Enforcement of laws designed to protect the public from  
18 incompetent, unethical, or unprofessional practitioners.

19 (d) Consumer education.

20 SEC. 5. Section 4990.30 of the Business and Professions Code  
21 is amended to read:

22 4990.30. (a) A licensed marriage and family therapist, marriage  
23 and family therapist intern, licensed clinical social worker,  
24 associate clinical social worker, licensed professional clinical  
25 counselor, professional clinical counselor intern, ~~or~~ licensed  
26 educational psychologist, *certified applied behavior analyst*, or  
27 *certified assistant applied behavior analyst* whose license or  
28 registration has been revoked, suspended, or placed on probation,  
29 may petition the board for reinstatement or modification of the  
30 penalty, including modification or termination of probation. The  
31 petition shall be on a form provided by the board and shall state  
32 any facts and information as may be required by the board  
33 including, but not limited to, proof of compliance with the terms  
34 and conditions of the underlying disciplinary order. The petition  
35 shall be verified by the petitioner who shall file an original and  
36 sufficient copies of the petition, together with any supporting  
37 documents, for the members of the board, the administrative law  
38 judge, and the Attorney General.

39 (b) The licensee or registrant may file the petition on or after  
40 the expiration of the following timeframes, each of which

1 commences on the effective date of the decision ordering the  
2 disciplinary action or, if the order of the board, or any portion of  
3 it, is stayed by the board itself or by the superior court, from the  
4 date the disciplinary action is actually implemented in its entirety:

5 (1) Three years for reinstatement of a license or registration that  
6 was revoked for unprofessional conduct, except that the board  
7 may, in its sole discretion, specify in its revocation order that a  
8 petition for reinstatement may be filed after two years.

9 (2) Two years for early termination of any probation period of  
10 three years or more.

11 (3) One year for modification of a condition, reinstatement of  
12 a license or registration revoked for mental or physical illness, or  
13 termination of probation of less than three years.

14 (c) The petition may be heard by the board itself or the board  
15 may assign the petition to an administrative law judge pursuant to  
16 Section 11512 of the Government Code.

17 (d) The petitioner may request that the board schedule the  
18 hearing on the petition for a board meeting at a specific city where  
19 the board regularly meets.

20 (e) The petitioner and the Attorney General shall be given timely  
21 notice by letter of the time and place of the hearing on the petition  
22 and an opportunity to present both oral and documentary evidence  
23 and argument to the board or the administrative law judge.

24 (f) The petitioner shall at all times have the burden of production  
25 and proof to establish by clear and convincing evidence that he or  
26 she is entitled to the relief sought in the petition.

27 (g) The board, when it is hearing the petition itself, or an  
28 administrative law judge sitting for the board, may consider all  
29 activities of the petitioner since the disciplinary action was taken,  
30 the offense for which the petitioner was disciplined, the petitioner's  
31 activities during the time his or her license or registration was in  
32 good standing, and the petitioner's rehabilitative efforts, general  
33 reputation for truth, and professional ability.

34 (h) The hearing may be continued from time to time as the board  
35 or the administrative law judge deems appropriate but in no case  
36 may the hearing on the petition be delayed more than 180 days  
37 from its filing without the consent of the petitioner.

38 (i) The board itself, or the administrative law judge if one is  
39 designated by the board, shall hear the petition and shall prepare  
40 a written decision setting forth the reasons supporting the decision.

1 In a decision granting a petition reinstating a license or modifying  
2 a penalty, the board itself, or the administrative law judge, may  
3 impose any terms and conditions that the agency deems reasonably  
4 appropriate, including those set forth in Sections 823 and 4990.40.  
5 If a petition is heard by an administrative law judge sitting alone,  
6 the administrative law judge shall prepare a proposed decision and  
7 submit it to the board. The board may take action with respect to  
8 the proposed decision and petition as it deems appropriate.

9 (j) The petitioner shall pay a fingerprinting fee and provide a  
10 current set of his or her fingerprints to the board. The petitioner  
11 shall execute a form authorizing release to the board or its designee,  
12 of all information concerning the petitioner's current physical and  
13 mental condition. Information provided to the board pursuant to  
14 the release shall be confidential and shall not be subject to  
15 discovery or subpoena in any other proceeding, and shall not be  
16 admissible in any action, other than before the board, to determine  
17 the petitioner's fitness to practice as required by Section 822.

18 (k) The board may delegate to its executive officer authority to  
19 order investigation of the contents of the petition.

20 (l) No petition shall be considered while the petitioner is under  
21 sentence for any criminal offense, including any period during  
22 which the petitioner is on court-imposed probation or parole or  
23 the petitioner is required to register pursuant to Section 290 of the  
24 Penal Code. No petition shall be considered while there is an  
25 accusation or petition to revoke probation pending against the  
26 petitioner.

27 (m) Except in those cases where the petitioner has been  
28 disciplined for violation of Section 822, the board may in its  
29 discretion deny without hearing or argument any petition that is  
30 filed pursuant to this section within a period of two years from the  
31 effective date of a prior decision following a hearing under this  
32 section.

33 SEC. 6. Section 4990.38 of the Business and Professions Code  
34 is amended to read:

35 4990.38. The board may deny an application or may suspend  
36 or revoke a license or registration issued under the chapters it  
37 administers and enforces for any disciplinary action imposed by  
38 another state or territory or possession of the United States, or by  
39 a governmental agency on a license, certificate or registration to  
40 practice marriage and family therapy, clinical social work,



1 educational psychology, professional clinical counseling, *applied*  
2 *behavior analysis*, or any other healing art. The disciplinary action,  
3 which may include denial of licensure or revocation or suspension  
4 of the license or imposition of restrictions on it, constitutes  
5 unprofessional conduct. A certified copy of the disciplinary action  
6 decision or judgment shall be conclusive evidence of that action.

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## LEGISLATIVE AGENDA ITEM DETAIL SHEET

**BILL NUMBER/ISSUE:** Senate Bill (SB) 462- special education advocates

**BILL SUMMARY:** This bill would require special education local plan areas (SELPA's), in collaboration with the Department of Education, to develop a voluntary special education advocate certification program.

Once a parent/representative files for a due process hearing, they would be immediately be provided with a list of persons and organization within the geographical area that can provide free or reduced cost representation or other assistance in preparing for the hearing. The list will be maintained by the Office of Administrative Hearings.

In order for persons to be placed on the list, individuals will be required to attend alternative dispute resolution (ADR) training provided by the SELPA and take a test for certification provided by the Office of Administrative Hearings.

Finally, the bill addresses reimbursement costs provided by the state; if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs will be made in accordance to the law.

**BACKGROUND:** Current law provides that the Superintendent has complete discretion in determining which individuals or groups are included on the list. This bill would take that discretion away and also require training and certification for individuals who want to be put on the list. This change would provide families with more information about individuals who are trained and are willing to represent families for free or at a low cost.

**ANALYSIS/DISCUSSION:** Since current law provides discretion to local SELPA's when providing information to parents/representatives, this change would provide for the dissemination of more information for parents/representatives regarding the availability of trained individuals in the area who could represent them at low or no cost.

The possible negative aspects are that the ADR training will be provided by the SELPA (or an agency designated by the SELPA) and there is no requirement for special education training. Therefore, the SELPA may gain an advantage in the process by training individuals with materials or curriculum that is not required to be disclosed or in

accordance with any format. In addition, a conflict may occur when one of the parties in dispute has provided training to the individual(s) assisting the opposing party.

**COUNCIL STRATEGIC PLAN OBJECTIVE:** Shape public policy that positively impacts Californians with developmental disabilities and their families.

**PRIOR COUNCIL ACTIVITY:** None

**RECOMMENDATION(S):** Support SB 462 with amendments requiring an independent agency provide the ADR training and include special education training.

**ATTACHMENT(S):** SB 462

**PREPARED:** Melissa C. Corral - April 5, 2011

AMENDED IN SENATE MARCH 25, 2011

**SENATE BILL**

**No. 462**

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**Introduced by Senator Blakeslee**

February 16, 2011

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~~An act relating to special education. An act to amend Section 56502 of, and to add Chapter 4.2 (commencing with Section 56395) to Part 30 of Division 4 of Title 2 of, the Education Code, relating to special education.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 462, as amended, Blakeslee. ~~Special education: litigation: costs: special education advocates: certification.~~

Existing law requires local educational agencies to initiate, and individualized education program teams to conduct, meetings for the purposes of developing, reviewing, and revising the individualized education program of each individual with exceptional needs, as specified. Existing law also provides that it is the intent of the Legislature that parties to special education disputes be encouraged to seek resolution through mediation in a nonadversarial atmosphere, which may not be attended by attorneys or other independent contractors used to provide legal advocacy services, prior to filing a request for a due process hearing. Existing law provides, however, that this does not preclude the parent or public agency from being accompanied and advised by nonattorney representatives in mediation conferences.

This bill would require special education local plan areas, collectively, and in collaboration with the State Department of Education, to develop a voluntary special education advocate certification program for persons who would participate, upon the invitation of a parent, as a member of a pupil's individualized education

program team, or, upon the invitation of a parent, in a mediation conference, as specified. The bill would require special education local plan areas to provide alternative dispute resolution training, and the Office of Administrative Hearings to administer a test, to persons seeking certification, as specified. The bill would also require the Office of Administrative Hearings to certify, and maintain a registry of, persons who have successfully passed the test and completed the training. The bill would require a certified special education advocate to disclose his or her relationship to the pupil or his or her parents, as specified. Because the bill would require local educational agencies to perform additional duties, the bill would impose a state-mandated local program.

Existing law provides that upon receipt by the Superintendent of Public Instruction of a written request for a due process hearing regarding a proposal or refusal to initiate or change the identification, assessment, or educational placement of a child with exceptional needs, the provision of a free appropriate public education to the child, or the availability of a program appropriate for the child, including the question of financial responsibility, from the parent or guardian or public agency, the Superintendent or his or her designee or designees immediately shall notify, in writing, all parties and provide them with a list of persons and organizations within the geographical area that can provide free or reduced cost representation or other assistance in preparing for the due process hearing. Existing law provides that the Superintendent or his or her designee shall have complete discretion in determining which individuals or groups shall be included on the list.

This bill would delete the provision providing that the Superintendent or his or her designee shall have complete discretion in determining which individuals or groups shall be included on the list and instead provide that the Superintendent or his or her designee shall certify that the listed persons or organizations provide services for free or at a reduced cost.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law requires all children with disabilities residing in the state, regardless of the severity of their disabilities, and who are in need of special education and related services, to be identified, located, and assessed. Existing law requires a local educational agency to provide for the identification and assessment of the exceptional needs of an individual, and the planning of an instructional program to meet the assessed needs.~~

~~This bill would state the intent of the Legislature to enact legislation that would address litigation fees incurred by school districts, special education local plan areas, and parents concerning special education disagreements.~~

~~Vote: majority. Appropriation: no. Fiscal committee: no-yes. State-mandated local program: no-yes.~~

*The people of the State of California do enact as follows:*

1     SECTION 1. Chapter 4.2 (commencing with Section 56395)  
2     is added to Part 30 of Division 4 of Title 2 of the Education Code,  
3     to read:

4  
5             CHAPTER 4.2. SPECIAL EDUCATION ADVOCATES  
6

7     56395. It is the intent of the Legislature to protect families of  
8     individuals with exceptional needs and to improve the relationship  
9     between special education advocates and school districts by  
10    providing a voluntary special advocate certification program.

11    56395.1. For the purpose of this chapter:

12    (a) "Alternative dispute resolution" means nonadversarial  
13    techniques used to reduce conflict and to come to a mutually  
14    beneficial agreement.

15    (b) "Certified special education advocate" means any  
16    nonattorney person, paid or unpaid, who speaks, writes, or works  
17    on behalf of a pupil who qualifies as an individual with exceptional  
18    needs, as defined in Section 56026, and who has been certified  
19    pursuant to the provisions of this chapter.

20    56395.2. Special education local plan areas, in collaboration  
21    with the department, shall do all of the following:

22    (a) Collectively, and in consultation with the Office of  
23    Administrative Hearings, develop a voluntary special education  
24    advocate certification program that includes a test, which shall

1 *be administered by the Office of Administrative Hearings, to certify*  
2 *that the person has sufficient knowledge and understanding of the*  
3 *process for resolving special education disputes.*

4 *(b) Determine the yearly fee to be charged by a special*  
5 *education local plan area to a person seeking certification as a*  
6 *special education advocate that shall not exceed the reasonable*  
7 *costs of providing training pursuant to subdivision (c).*

8 *(c) Provide alternative dispute resolution training at least twice*  
9 *per year for persons seeking certification as a special education*  
10 *advocate. This training also may be offered by an entity approved*  
11 *by a special education local plan area. The training shall consist*  
12 *of all of the following.*

13 *(1) At least four hours of alternative dispute resolution training.*

14 *(2) Relevant ethics training.*

15 *(3) Review of relevant special education laws.*

16 *(d) Notify the Office of Administrative Hearings whether a*  
17 *person seeking certification has completed the alternative dispute*  
18 *resolution training.*

19 *56395.3. The Office of Administrative Hearings shall do all of*  
20 *the following:*

21 *(a) Administer a test, either online or in person, to a person*  
22 *seeking certification as a special education advocate. The test*  
23 *shall be offered in the native language of the person seeking*  
24 *certification as a special education advocate.*

25 *(b) Certify a person who has successfully passed the test*  
26 *described in subdivision (a) and who has fulfilled the training*  
27 *requirements listed in subdivision (c) of Section 56395.2.*  
28 *Certification may be granted for a period not to exceed five years.*

29 *(c) Post a registry of certified special education advocates on*  
30 *its Internet Web site consistent with subdivision (h) of Section*  
31 *56502.*

32 *(d) Charge a fee to a person seeking certification as a special*  
33 *education advocate that shall not exceed the reasonable costs of*  
34 *administering the test pursuant to subdivision (a) and maintaining*  
35 *the registry pursuant to subdivision (c).*

36 *56395.4. (a) A certified special education advocate shall do*  
37 *all of the following:*

38 *(1) Upon the invitation of a parent, speak, write, or work on*  
39 *behalf of a pupil who qualifies as an individual with exceptional*



1 *needs pursuant to paragraph (1) of subdivision (b) of Section*  
2 *56341, or subdivision (b) of Section 56500.3.*

3 *(2) Register with the Office of Administrative Hearings and*  
4 *renew their certification every five years. Registrants shall indicate*  
5 *whether they are a paid or an unpaid advocate. If a person*  
6 *registers as a paid advocate, and he or she is referred by an*  
7 *attorney, he or she shall be required to report the identity of the*  
8 *person who employs him or her.*

9 *(3) Have a report, available upon request by parents, special*  
10 *education local plan area staff, a school district, or the department,*  
11 *regarding the frequency of their advocacy activities, the subject*  
12 *matter of the issues upon which he or she has worked, the fees, if*  
13 *any, he or she has received for his or her advocacy, and the length*  
14 *of time he or she took to resolve each case.*

15 *(4) Disclose at the beginning of a mediation session, in writing,*  
16 *his or her relationship to the pupil or his or her parents and*  
17 *indicate whether he or she is receiving payment of any kind for*  
18 *his or her services.*

19 *(b) A certified special education advocate may not be*  
20 *reimbursed by parents, organizations, advocacy groups, or school*  
21 *districts for the certification fee imposed pursuant to subdivision*  
22 *(b) of Section 56395.2 or subdivision (d) of Section 56395.3.*

23 *56395.5. (a) A parent, as defined in Section 56028, is not*  
24 *required to be certified pursuant to the provisions of this chapter*  
25 *in order to represent his or her child.*

26 *(b) A mediator, as described in subdivision (d) of Section*  
27 *56500.3, shall require nonparent participants in a mediation*  
28 *session to disclose their relationship to the pupil and their status*  
29 *as an advocate.*

30 *SEC. 2. Section 56502 of the Education Code is amended to*  
31 *read:*

32 *56502. (a) All requests for a due process hearing shall be filed*  
33 *with the Superintendent in accordance with Section 300.508(a)*  
34 *and (b) of Title 34 of the Code of Federal Regulations.*

35 *(b) The Superintendent shall develop a model form to assist*  
36 *parents and guardians in filing a request for due process that is in*  
37 *accordance with Section 300.509 of Title 34 of the Code of Federal*  
38 *Regulations.*

39 *(c) (1) The party, or the attorney representing the party,*  
40 *initiating a due process hearing by filing a written request with the*

1 Superintendent shall provide the other party to the hearing with a  
2 copy of the request at the same time as the request is filed with the  
3 Superintendent. The due process hearing request notice shall  
4 remain confidential. In accordance with Section 1415(b)(7)(A) of  
5 Title 20 of the United States Code, the request shall include the  
6 following:

7 (A) The name of the child, the address of the residence of the  
8 child, or available contact information in the case of a homeless  
9 child, and the name of the school the child is attending.

10 (B) In the case of a homeless child or youth within the meaning  
11 of paragraph (2) of Section 725 of the federal McKinney-Vento  
12 Homeless Assistance Act (42 U.S.C. Sec. 11434a(2)), available  
13 contact information for the child and the name of the school the  
14 child is attending.

15 (C) A description of the nature of the problem of the child  
16 relating to the proposed initiation or change, including facts relating  
17 to the problem.

18 (D) A proposed resolution of the problem to the extent known  
19 and available to the party at the time.

20 (2) A party may not have a due process hearing until the party,  
21 or the attorney representing the party, files a request that meets  
22 the requirements listed in this subdivision.

23 (d) (1) The due process hearing request notice required by  
24 Section 1415(b)(7)(A) of Title 20 of the United States Code shall  
25 be deemed to be sufficient unless the party receiving the notice  
26 notifies the due process hearing officer and the other party in  
27 writing that the receiving party believes the due process hearing  
28 request notice has not met the notice requirements. The party  
29 providing a hearing officer notification shall provide the  
30 notification within 15 days of receiving the due process hearing  
31 request notice. Within five days of receipt of the notification, the  
32 hearing officer shall make a determination on the face of the notice  
33 of whether the notification meets the requirements of Section  
34 1415(b)(7)(A) of Title 20 of the United States Code, and shall  
35 immediately notify the parties in writing of the determination.

36 (2) (A) The response to the due process hearing request notice  
37 shall be made within 10 days of receiving the request notice in  
38 accordance with Section 1415(c)(2)(B) of Title 20 of the United  
39 States Code.

1 (B) In accordance with Section 300.508(e)(1) of Title 34 of the  
2 Code of Federal Regulations, if the local educational agency has  
3 not sent a prior written notice under Section 56500.4 and Section  
4 300.503 of Title 34 of the Code of Federal Regulations to the parent  
5 regarding the subject matter contained in the due process hearing  
6 request of the parent, the response from the local educational  
7 agency to the parent shall include all of the following:

8 (i) An explanation of why the agency proposed or refused to  
9 take the action raised in the due process hearing request.

10 (ii) A description of other options that the individualized  
11 education program team considered and the reasons why those  
12 options were rejected.

13 (iii) A description of each assessment procedure, assessment,  
14 record, or report the agency used as the basis for the proposed or  
15 refused action.

16 (iv) A description of other factors that are relevant to the  
17 proposed or refused action of the agency.

18 (C) A response by a local educational agency under  
19 subparagraph (B) shall not be construed to preclude the local  
20 educational agency from asserting that the due process request of  
21 the parent was insufficient, where appropriate.

22 (D) Except as provided under subparagraph (B), the party  
23 receiving a due process hearing request notice, within 10 days of  
24 receiving the notice, shall send to the other party, in accordance  
25 with Section 300.508(f) of Title 34 of the Code of Federal  
26 Regulations, a response that specifically addresses the issues raised  
27 in the due process hearing request notice.

28 (e) A party may amend a due process hearing request notice  
29 only if the other party consents in writing to the amendment and  
30 is given the opportunity to resolve the hearing issue through a  
31 meeting held pursuant to Section 1415(f)(1)(B) of Title 20 of the  
32 United States Code, or the due process hearing officer grants  
33 permission, except that the hearing officer may only grant  
34 permission at any time not later than five days before a due process  
35 hearing occurs. The applicable timeline for a due process hearing  
36 under this chapter shall recommence at the time the party files an  
37 amended notice, including the timeline under Section 1415(f)(1)(B)  
38 of Title 20 of the United States Code.

39 (f) The Superintendent shall take steps to ensure that within 45  
40 days after receipt of the written hearing request the hearing is

1 immediately commenced and completed, including, any mediation  
2 requested at any point during the hearing process pursuant to  
3 paragraph (2) of subdivision (b) of Section 56501, and a final  
4 administrative decision is rendered, unless a continuance has been  
5 granted pursuant to Section 56505.

6 (g) Notwithstanding any procedure set forth in this chapter, a  
7 public agency and a parent ~~or guardian~~, if the party initiating the  
8 hearing so chooses, may meet informally to resolve an issue or  
9 issues relating to the identification, assessment, or education and  
10 placement of the child, or the provision of a free appropriate public  
11 education to the child, to the satisfaction of both parties prior to  
12 the hearing. The informal meeting shall be conducted by the district  
13 superintendent, county superintendent, or director of the public  
14 agency or his or her designee. A designee appointed pursuant to  
15 this subdivision shall have the authority to resolve the issue or  
16 issues.

17 (h) Upon receipt by the Superintendent of a written request by  
18 the parent ~~or guardian~~ or public agency, the Superintendent or his  
19 or her designee or designees immediately shall notify, in writing,  
20 all parties of the request for the hearing and the scheduled date for  
21 the hearing. The notice shall advise all parties of all their rights  
22 relating to procedural safeguards. The Superintendent or his or her  
23 designee shall provide both parties with a list of persons and  
24 organizations within the geographical area that can provide free  
25 or reduced cost representation or other assistance in preparing for  
26 the due process hearing. This list shall include a brief description  
27 of the requirement to qualify for the services. The Superintendent  
28 or his or her designee shall ~~have complete discretion in determining~~  
29 ~~which individuals or groups shall be included on the list~~ *certify*  
30 *that the listed persons or organizations provide services for free*  
31 *or at a reduced cost.*

32 (i) In accordance with Section 1415(f)(3)(B) of Title 20 of the  
33 United States Code, the party requesting the due process hearing  
34 shall not be allowed to raise issues at the due process hearing that  
35 were not raised in the notice filed under this section, unless the  
36 other party agrees otherwise.

37 *SEC. 3. If the Commission on State Mandates determines that*  
38 *this act contains costs mandated by the state, reimbursement to*  
39 *local agencies and school districts for those costs shall be made*

1 *pursuant to Part 7 (commencing with Section 17500) of Division*  
2 *4 of Title 2 of the Government Code.*

3 ~~SECTION 1. It is the intent of the Legislature to enact~~  
4 ~~legislation that would address litigation fees incurred by school~~  
5 ~~districts, special education local plan areas, and parents concerning~~  
6 ~~special education disagreements.~~

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## LEGISLATIVE AGENDA ITEM DETAIL SHEET

**BILL NUMBER/ISSUE:** Assembly Bill (AB) 876- In-Home Supportive Services (IHSS)

**SUMMARY:** Existing law provides for the county-administered IHSS program, under which qualified aged, blind, and persons with disabilities receive services enabling them to remain in their own homes. Existing law prohibits a person from providing supportive services if he or she has been convicted of specified crimes in the previous 10 years. Existing law authorizes a recipient of services who wishes to employ a provider applicant who has been convicted of a specified offense to submit to the county a prescribed individual waiver, signed by the recipient, or by the recipient's authorized representative, and returned to the county welfare department. This bill would prohibit a provider applicant from signing his or her own individual waiver form as the recipient's authorized representative.

**BACKGROUND:** AB 876 is designed to modify the law in a way that problems associated with care providers' criminal background are addressed and that IHSS recipients are not put in an abusive situation.

**ANALYSIS/DISCUSSION:** IHSS allows qualified aged, blind, and persons with disabilities to receive services enabling them to remain in their own homes. The recipients are also allowed to choose who their care provider will be. If a provider has a criminal background within the last ten years and falls under the IHSS Tier 2 Exclusionary Crimes List they are still able to take care of the recipient as long as the recipient signs a waiver. However, the IHSS recipient can assign their provider to be an authorized representative who is allowed to sign their own waiver for the above circumstances.

**COUNCIL STRATEGIC PLAN OBJECTIVE:** Support public policies that positively impact the lives of persons with developmental disabilities and their families.

**PRIOR COUNCIL ACTIVITY:** IHSS is an ongoing issue in the California developmental services system. Consequently the Council has been increasingly involved in IHSS advocacy and policy issues.

**RECOMMENDATION(S):** Support AB 876

**ATTACHMENT(S):** AB 876 and the Exclusionary Crime List

**PREPARED:** Karim Alipourfard, April 5, 2011





AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 876**

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**Introduced by Assembly Member Valadao**

February 17, 2011

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An act to amend Section ~~12300~~ 12305.87 of the Welfare and Institutions Code, relating to in-home supportive services.

LEGISLATIVE COUNSEL'S DIGEST

AB 876, as amended, Valadao. In-Home Supportive Services program.

Existing law provides for the county-administered In-Home Supportive Services (IHSS) program, under which qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes. *Existing law prohibits a person from providing supportive services if he or she has been convicted of specified crimes in the previous 10 years. Existing law authorizes a recipient of services who wishes to employ a provider applicant who has been convicted of a specified offense to submit to the county a prescribed individual waiver, signed by the recipient, or by the recipient's authorized representative, and returned to the county welfare department.*

~~This bill would make a technical, nonsubstantive change to these provisions:~~

*This bill would prohibit a provider applicant from signing his or her own individual waiver form as the recipient's authorized representative.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 12305.87 of the Welfare and Institutions  
2     Code is amended to read:

3     12305.87. (a) (1) Commencing 90 days following the effective  
4     date of the act that adds this section, a person specified in paragraph  
5     (2) shall be subject to the criminal conviction exclusions provided  
6     for in this section, in addition to the exclusions required under  
7     Section 12305.81.

8     (2) This section shall apply to a person who satisfies either of  
9     the following conditions:

10    (A) He or she is a new applicant to provide services under this  
11    article.

12    (B) He or she is an applicant to provide services under this  
13    article whose application has been denied on the basis of a  
14    conviction and for whom an appeal of that denial is pending.

15    (b) Subject to subdivisions (c), (d), and (e), an applicant subject  
16    to this section shall not be eligible to provide or receive payment  
17    for providing supportive services for 10 years following a  
18    conviction for, or incarceration following a conviction for, any of  
19    the following:

20    (1) A violent or serious felony, as specified in subdivision (c)  
21    of Section 667.5 of the Penal Code and subdivision (c) of Section  
22    1192.7 of the Penal Code.

23    (2) A felony offense for which a person is required to register  
24    under subdivision (c) of Section 290 of the Penal Code. For  
25    purposes of this ~~subparagraph~~ paragraph, the 10-year time period  
26    specified in this section shall commence with the date of conviction  
27    for, or incarceration following a conviction for, the underlying  
28    offense, and not the date of registration.

29    (3) A felony offense described in paragraph (2) of subdivision  
30    (c) or paragraph (2) of subdivision (g) of Section 10980.

31    (c) Notwithstanding subdivision (b), an application shall not be  
32    denied under this section if the applicant has obtained a certificate  
33    of rehabilitation under Chapter 3.5 (commencing with Section  
34    4852.01) of Title 6 of Part 3 of the Penal Code or *if* the information  
35    or accusation against him or her has been dismissed pursuant to  
36    Section 1203.4 of the Penal Code.

37    (d) (1) Notwithstanding subdivision (b), a recipient of services  
38    under this article who wishes to employ a provider applicant who

1 has been convicted of an offense specified in subdivision (b) may  
2 submit to the county an individual waiver of the exclusion provided  
3 for in this section. This paragraph shall not be construed to allow  
4 a recipient to submit an individual waiver with respect to a  
5 conviction or convictions for offenses specified in Section  
6 12305.81.

7 (2) The county shall notify a recipient who wishes to hire a  
8 person who is applying to be a provider and who has been  
9 convicted of an offense subject to exclusion under this section of  
10 that applicant's relevant criminal offense convictions that are  
11 covered by subdivision (b). The notice shall include both of the  
12 following:

13 (A) A summary explanation of the exclusions created by  
14 subdivision (b), as well as the applicable waiver process described  
15 in this subdivision and the process for an applicant to seek a general  
16 exception, as described in subdivision (e). This summary  
17 explanation shall be developed by the department for use by all  
18 counties.

19 (B) An individual waiver form, which shall also be developed  
20 by the department and used by all counties. The waiver form shall  
21 include both of the following:

22 (i) A space for the county to include a reference to any Penal  
23 Code sections and corresponding offense names or descriptions  
24 that describe the relevant conviction or convictions that are covered  
25 by subdivision (b) and that the provider applicant has in his or her  
26 background.

27 (ii) A statement that the service recipient, or his or her authorized  
28 representative, if applicable, is aware of the applicant's conviction  
29 or convictions and agrees to waive application of this section and  
30 employ the applicant as a provider of services under this article.

31 (3) To ensure that the initial summary explanation referenced  
32 in this subdivision is comprehensible for recipients and provider  
33 applicants, the department shall consult with representatives of  
34 county welfare departments and advocates for, or representatives  
35 of, recipients and providers in developing the summary explanation  
36 and offense descriptions.

37 (4) The individual waiver form shall be signed by the recipient,  
38 or by the recipient's authorized representative, if applicable, and  
39 returned to the county welfare department by mail or in person. *A*  
40 *provider applicant shall not sign his or her own individual waiver*

1 *form as the recipient's authorized representative.* The county shall  
2 retain the waiver form and a copy of the provider applicant's  
3 criminal offense record information search response until the date  
4 that the convictions that are the subject of the waiver request are  
5 no longer within the 10-year period specified in subdivision (b).

6 (5) An individual waiver submitted pursuant to this subdivision  
7 shall entitle a recipient to hire a provider applicant who otherwise  
8 meets all applicable enrollment requirements for the In-Home  
9 Supportive Services program. A provider hired pursuant to an  
10 individual waiver may be employed only by the recipient who  
11 requested that waiver, and the waiver shall only be valid with  
12 respect to convictions that are specified in that waiver. A new  
13 waiver shall be required if the provider is subsequently convicted  
14 of an offense to which this section otherwise would apply. A  
15 provider who wishes to be listed on a provider registry or to provide  
16 supportive services to a recipient who has not requested an  
17 individual waiver shall be required to apply for a general exception,  
18 as provided for in subdivision (e).

19 (6) Nothing in this section shall preclude a provider who is  
20 eligible to receive payment for services provided pursuant to an  
21 individual waiver under this subdivision from being eligible to  
22 receive payment for services provided to one or more additional  
23 recipients who obtain waivers pursuant to this same subdivision.

24 (7) The state and a county shall be immune from any liability  
25 resulting from granting an individual waiver under this subdivision.

26 (e) (1) Notwithstanding subdivision (b), an applicant who has  
27 been convicted of an offense identified in subdivision (b) may seek  
28 from the department a general exception to the exclusion provided  
29 for in this section.

30 (2) Upon receipt of a general exception request, the department  
31 shall request a copy of the applicant's criminal offender record  
32 information search response from the applicable county welfare  
33 department. Notwithstanding any other provision of law, the county  
34 shall provide a copy of the criminal offender record information  
35 search response, as provided to the county by the Department of  
36 Justice, to the department. The county shall provide this  
37 information in a manner that protects the confidentiality and  
38 privacy of the criminal offender record information search  
39 response. The state or federal criminal history record information

1 search response shall not be modified or altered from its form or  
2 content as provided by the Department of Justice.

3 (3) The department shall consider the following factors when  
4 determining whether to grant a general exception under this  
5 subdivision:

6 (A) The nature and seriousness of the conduct or crime under  
7 consideration and its relationship to employment duties and  
8 responsibilities.

9 (B) The person's activities since conviction, including, but not  
10 limited to, employment or participation in therapy education, or  
11 community service, that would indicate changed behavior.

12 (C) The number of convictions and the time that has elapsed  
13 since the conviction or convictions.

14 (D) The extent to which the person has complied with any terms  
15 of parole, probation, restitution, or any other sanction lawfully  
16 imposed against the person.

17 (E) Any evidence of rehabilitation, including character  
18 references, submitted by the person, or by others on the person's  
19 behalf.

20 (F) Employment history and current or former employer  
21 recommendations. Additional consideration shall be given to  
22 employer recommendations provided by a person who has received  
23 or has indicated a desire to receive supportive or personal care  
24 services from the applicant, including, but not limited to, those  
25 services, specified in Section 12300.

26 (G) Circumstances surrounding the commission of the offense  
27 that would demonstrate the unlikelihood of repetition.

28 (H) The granting by the Governor of a full and unconditional  
29 pardon.

30 (f) If the department makes a determination to deny an  
31 application to provide services pursuant to a request for a general  
32 exception, the department shall notify the applicant of this  
33 determination by either personal service or registered mail. The  
34 notice shall include the following information:

35 (1) A statement of the department's reasons for the denial that  
36 evaluates evidence of rehabilitation submitted by the applicant, if  
37 any, and that specifically addresses any evidence submitted relating  
38 to the factors in paragraph (3) of subdivision (e).

39 (2) A copy of the applicant's criminal offender record  
40 information search response, even if the applicant already has

1 received a copy pursuant to Section 12301.6 or 12305.86. The  
2 department shall provide this information in a manner that protects  
3 the confidentiality and privacy of the criminal offender record  
4 information search response.

5 (A) The state or federal criminal history record shall not be  
6 modified or altered from its form or content as provided by the  
7 Department of Justice.

8 (B) The department shall retain a copy of each individual's  
9 criminal offender record information search response until the date  
10 that the convictions that are the subject of the exception are no  
11 longer within the 10-year period specified in subdivision (b), and  
12 shall record the date the copy of the response was provided to the  
13 individual and the department.

14 (C) The criminal offender record information search response  
15 shall not be made available by the department to any individual  
16 other than the provider applicant.

17 (g) (1) Upon written notification that the department has  
18 determined that a request for exception shall be denied, the  
19 applicant may request an administrative hearing by submitting a  
20 written request to the department within 15 business days of receipt  
21 of the written notification. Upon receipt of a written request, the  
22 department shall hold an administrative hearing consistent with  
23 the procedures specified in Section 100171 of the Health and Safety  
24 Code, except where those procedures are inconsistent with this  
25 section.

26 (2) A hearing under this subdivision shall be conducted by a  
27 hearing officer or administrative law judge designated by the  
28 director. A written decision shall be sent by certified mail to the  
29 applicant.

30 (h) The department shall revise the provider enrollment form  
31 developed pursuant to Section 12305.81 to include both of the  
32 following:

33 (1) The text of subdivision (c) of Section 290 of the Penal Code,  
34 subdivision (c) of Section 667.5 of the Penal Code, subdivision  
35 (c) of Section 1192.7 of the Penal Code, and paragraph (2) of  
36 subdivisions (c) and (g) of Section 10980.

37 (2) A statement that the provider understands that if he or she  
38 has been convicted, or incarcerated following conviction for, any  
39 of the crimes specified in the provisions identified in paragraph  
40 (b) in the last 10 years, and has not received a certificate of

1 rehabilitation or had the information or accusation dismissed, as  
2 provided in subdivision (c), he or she shall only be authorized to  
3 receive payment for providing in-home supportive services under  
4 an individual waiver or general exception as described in this  
5 section, and upon meeting all other applicable criteria for  
6 enrollment as a provider in the program.

7 (i) (1) Notwithstanding the rulemaking provisions of the  
8 Administrative Procedure Act (Chapter 3.5 (commencing with  
9 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
10 Code), the department may implement and administer this section  
11 through all-county letters or similar instructions from the  
12 department until regulations are adopted. The department shall  
13 adopt emergency regulations implementing these provisions no  
14 later than July 1, 2011. The department may readopt any emergency  
15 regulation authorized by this section that is the same as or  
16 substantially equivalent to an emergency regulation previously  
17 adopted under this section.

18 (2) The initial adoption of emergency regulations pursuant to  
19 this section and one readoption of emergency regulations shall be  
20 deemed an emergency and necessary for the immediate  
21 preservation of the public peace, health, safety, or general welfare.  
22 Initial emergency regulations and the one readoption of emergency  
23 regulations authorized by this section shall be exempt from review  
24 by the Office of Administrative Law. The initial emergency  
25 regulations and the one readoption of emergency regulations  
26 authorized by this section shall be submitted to the Office of  
27 Administrative Law for filing with the Secretary of State and each  
28 shall remain in effect for no more than 180 days, by which time  
29 final regulations may be adopted.

30 (j) In developing the individual waiver form and all-county  
31 letters or information notices or similar instructions, the department  
32 shall consult with stakeholders, including, but not limited to,  
33 representatives of the county welfare departments, and  
34 representatives of consumers and providers. The consultation shall  
35 include at least one in-person meeting prior to the finalization of  
36 the individual waiver form and all-county letters or information  
37 notices or similar instructions.

38 ~~SECTION 1. Section 12300 of the Welfare and Institutions~~  
39 ~~Code is amended to read:~~

1 12300. (a) The purpose of this article is to provide in every  
2 county in a manner consistent with this chapter and the annual  
3 Budget Act those supportive services identified in this section to  
4 aged, blind, or disabled persons, as defined under this chapter,  
5 who are unable to perform the services themselves and who cannot  
6 safely remain in their homes or abodes of their own choosing unless  
7 these services are provided.

8 (b) Supportive services shall include domestic services and  
9 services related to domestic services, heavy cleaning, personal  
10 care services, accompaniment by a provider when needed during  
11 necessary travel to health-related appointments or to alternative  
12 resource sites, yard hazard abatement, protective supervision,  
13 teaching and demonstration directed at reducing the need for other  
14 supportive services, and paramedical services which make it  
15 possible for the recipient to establish and maintain an independent  
16 living arrangement.

17 (c) Personal care services shall mean all of the following:

18 (1) Assistance with ambulation.

19 (2) Bathing, oral hygiene, and grooming.

20 (3) Dressing.

21 (4) Care and assistance with prosthetic devices.

22 (5) Bowel, bladder, and menstrual care.

23 (6) Repositioning, skin care, range of motion exercises, and  
24 transfers.

25 (7) Feeding and assurance of adequate fluid intake.

26 (8) Respiration.

27 (9) Assistance with self-administration of medications.

28 (d) Personal care services are available if these services are  
29 provided in the beneficiary's home and other locations as may be  
30 authorized by the director. Among the locations that may be  
31 authorized by the director under this paragraph is the recipient's  
32 place of employment if all of the following conditions are met:

33 (1) The personal care services are limited to those that are  
34 currently authorized for a recipient in the recipient's home and  
35 those services are to be utilized by the recipient at the recipient's  
36 place of employment to enable the recipient to obtain, retain, or  
37 return to work. Authorized services utilized by the recipient at the  
38 recipient's place of employment shall be services that are relevant  
39 and necessary in supporting and maintaining employment.  
40 However, workplace services shall not be used to supplant any



1 reasonable accommodations required of an employer by the federal  
2 Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.;  
3 ADA) or other legal entitlements or third-party obligations.

4 (2) The provision of personal care services at the recipient's  
5 place of employment shall be authorized only to the extent that  
6 the total hours utilized at the workplace are within the total personal  
7 care services hours authorized for the recipient in the home.  
8 Additional personal care services hours may not be authorized in  
9 connection with a recipient's employment.

10 (e) Where supportive services are provided by a person having  
11 the legal duty pursuant to the Family Code to provide for the care  
12 of his or her child who is the recipient, the provider of supportive  
13 services shall receive remuneration for the services only when the  
14 provider leaves full-time employment or is prevented from  
15 obtaining full-time employment because no other suitable provider  
16 is available and where the inability of the provider to provide  
17 supportive services may result in inappropriate placement or  
18 inadequate care.

19 These providers shall be paid only for the following:

20 (1) Services related to domestic services.

21 (2) Personal care services.

22 (3) Accompaniment by a provider when needed during necessary  
23 travel to health-related appointments or to alternative resource  
24 sites.

25 (4) Protective supervision only as needed because of the  
26 functional limitations of the child.

27 (5) Paramedical services.

28 (f) To encourage maximum voluntary services, so as to reduce  
29 governmental costs, respite care shall also be provided. Respite  
30 care is temporary or periodic service for eligible recipients to  
31 relieve persons who are providing care without compensation.

32 (g) A person who is eligible to receive a service or services  
33 under an approved federal waiver authorized pursuant to Section  
34 14132.951, or a person who is eligible to receive a service or  
35 services authorized pursuant to Section 14132.95, shall not be  
36 eligible to receive the same service or services pursuant to this  
37 article. In the event that the waiver authorized pursuant to Section  
38 14132.951, as approved by the federal government, does not extend  
39 eligibility to all persons otherwise eligible for services under this  
40 article, or does not cover a service or particular services, or does

1 not cover the scope of a service that a person would otherwise be  
2 eligible to receive under this article, those persons who are not  
3 eligible for services, or for a particular service under the waiver  
4 or Section 14132.95 shall be eligible for services under this article.

5 (h) (1) All services provided pursuant to this article shall be  
6 equal in amount, scope, and duration to the same services provided  
7 pursuant to Section 14132.95, including any adjustments that may  
8 be made to those services pursuant to subdivision (e) of Section  
9 14132.95.

10 (2) Notwithstanding any other provision of this article, the rate  
11 of reimbursement for in-home supportive services provided through  
12 any mode of service shall not exceed the rate of reimbursement  
13 established under subdivision (j) of Section 14132.95 for the same  
14 mode of service unless otherwise provided in the annual Budget  
15 Act.

16 (3) The maximum number of hours available under Section  
17 14132.95, Section 14132.951, and this section, combined, shall  
18 be 283 hours per month. Any recipient of services under this article  
19 shall receive no more than the applicable maximum specified in  
20 Section 12303.4.

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# **CDSS – ADULT PROGRAMS DIVISION**

**Stakeholder Meeting November 19, 2010**

# WELCOME

## TODAY'S MEETING OBJECTIVE

To provide an opportunity for public discussion and comment on the new AB 1612 required:

- Recipient Waiver,
- And Related Provider Forms

In Addition to allow Adult Programs Division to improve the draft products with stakeholder input.

## AGENDA

- Overview and Bridging of current IHSS provider process and AB 1612 requirements for the new Exclusionary Crimes for IHSS
- Review and Discussion
  - Recipient Tier 1 and 2 forms
  - Recipient waiver
  - Provider Tier 1 and 2 forms
- Final comments and deadline for public input

## IHSS CURRENT PROVIDER EXCLUSIONARY CRIMES

### WIC 12305.81

- PC 273a(a) Child Abuse Felony
  - PC 368 Elder Abuse Felony
  - Government Fraud Felony for Medi-Cal
- Provider applies to the County or Public Authority (PA) and is fingerprinted,
  - DOJ criminal records are reviewed for eligibility based upon 3 crimes,
  - County or PA send a denial letter and notice to provider of how to appeal to CDSS.

# WHAT'S CHANGING DUE TO AB 1612

## Expanded list of Provider Exclusionary Crimes

- Established a 2 tier system of exclusionary crimes
- 90 days To Implement
- Scheduled for February 1, 2011

## Expanded Options for IHSS Providers & Recipients

- Created new Recipient Waiver process \*\*\*
- Created new Provider General Exception Process
- Created new Administrative Hearing to appeal General Exception

# NEW IHSS PROVIDER LIST OF EXCLUSIONARY CRIMES (2/1/11)

Tier 1 – subject to 10 year  
limit

- Existing List of Provider  
Crimes used 11/24/09 forward

Tier 2 – subject to 10 year  
limit

- A violent or serious  
felony under PC Section  
667.5 and PC Section  
1192.7 – sub c.

## WIC 12305.81

- PC 273a(a) Child Abuse  
Felony
- PC 368 Elder Abuse  
Felony
- Government Fraud  
Felony for Medi-Cal

- Sex Offender Felony  
Offenses under PC  
section 290, sub c
- Government Fraud  
Felony – (welfare and  
food stamps fraud); WIC  
10980



## PROCESS DIFFERENCES BETWEEN TIERS

### Tier 1

- No Waivers Allowed
- No General Exception Allowed
- No Administrative Hearings Allowed
- No Expungement of Crimes Allowed

### Tier 2

- Waiver Allowed
- General Exception Allowed
- Administrative Hearings Allowed
- Expungement Allowed

## NEXT STEPS - DETAILS

- Review new Recipient Tier 1 forms and Tier 2 Waiver and Forms
- Review Provider Tier 1 forms and Tier 2 Forms and Processes

## LEGISLATIVE AGENDA ITEM DETAIL SHEET

**BILL NUMBER/ISSUE:** Assembly Bill (AB) 862

**BILL SUMMARY:** This bill would enact the Regional Center Records Act (RCRA). The RCRA would require the regional center to give specified information to the public upon request.

**BACKGROUND:** The California Public Records Act (PRA) currently requires that all state agencies release information requested by the public unless the information is exempt from disclosure for very specific reasons; however, since the regional centers are not state agencies, they do not have to provide information to the public upon their request.

**ANALYSIS/DISCUSSION:** State agencies must provide information to the public upon their request; this process allows for individuals to receive information about public budget, expenditures, actions, plans and policies of state agencies. This exchange of information allows for transparency in the use of public dollars.

Although the regional centers are almost exclusively funded with public dollars, information from the regional center is considered confidential for the most part.

This bill would allow for more regional center transparency by allowing some information to be released to the public upon their request.

There is a major difference in the PRA and the proposed RCRA. The PRA requires the release of information UNLESS there is a qualified exception that protects the information from disclosure, thereby allowing the maximum transparency without releasing confidential information. The RCRA proposes to release only specific information, thereby limiting information requests.

**COUNCIL STRATEGIC PLAN OBJECTIVE:** Shape public policy that positively impacts Californians with developmental disabilities and their families.

**PRIOR COUNCIL ACTIVITY:** None

**RECOMMENDATION(S):** Support AB 862

**ATTACHMENT(S):** AB 862 and Assembly Committee on Human Services analysis.

**PREPARED:** Melissa C. Corral, March 24, 2011



**ASSEMBLY BILL**

**No. 862**

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**Introduced by Assembly Members Silva and Jeffries  
(Principal coauthor: Assembly Member Logue)  
(Coauthor: Assembly Member Allen)  
(Coauthor: Senator Emmerson)**

February 17, 2011

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An act to add Chapter 15 (commencing with Section 4870) to Division 4.5 of the Welfare and Institutions Code, relating to developmental services.

LEGISLATIVE COUNSEL'S DIGEST

AB 862, as introduced, Silva. Developmental services: Regional Center Records Act.

Under existing law, the Lanterman Developmental Disabilities Services Act, the State Department of Developmental Services is authorized to contract with regional centers to provide support and services to individuals with developmental disabilities.

The California Public Records Act requires state and local agencies to make their records available for public inspection and to make copies available upon request and payment of a fee unless they are exempt from disclosure.

This bill would enact the Regional Center Records Act. The act would require regional centers to disclose specified information to the public, subject to certain provisions. The bill would also require the department to consult with the regional centers to develop policies and procedures to implement the act.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 15 (commencing with Section 4870) is added to Division 4.5 of the Welfare and Institutions Code, to read:

CHAPTER 15. REGIONAL CENTER RECORDS

4870. This chapter shall be known, and may be cited as, the Regional Center Records Act.

4871. For purposes of this chapter, the following definitions shall apply:

(a) "Department" shall mean the State Department of Developmental Services.

(b) "Vendor" shall mean an individual or entity approved to provide services and supports to consumers pursuant to Section 4648.

4872. A regional center shall, upon request from a member of the public, make available in a reasonable and timely manner, the following information:

(a) The company name and principals of any entity established as a vendor with the regional center.

(b) Vendor program designs.

(c) Actual rates per service codes.

(d) Actual rates paid to all vendors.

(e) Actual rates paid per vendor code.

(f) Actual rate formulas.

(g) Actual vendor referral rates.

(h) Vendor reviews, audits, or quality assurance reports.

(i) Contracts entered into with any vendor.

(j) The number of consumers that qualify for a developmental disability waiver.

(k) Data regarding actual administrative expenditures to include travel, salaries, and pension costs.

(l) Data regarding contracts for services to the regional center, including, but not limited to, leases, vehicles, legal services, consulting, and any other goods or services.

(m) Any legal settlements that can be disclosed.

(n) Conflict of interest disclosures.

(o) Any public moneys used for or by a nonprofit housing organization.

1 (p) Audits of the regional center.

2 4873. A regional center may charge a fee to cover the actual  
3 costs of reproduction of files commensurate with the fee schedule  
4 in the California Public Records Act (Chapter 3.5 (commencing  
5 with Section 6250) of Division 7 of Title 1 of the Government  
6 Code).

7 4874. The department shall consult with the regional centers  
8 to develop policies and procedures to implement this chapter.

9 4875. Nothing in this chapter shall be construed to limit or  
10 change the privacy protections afforded by any other provision of  
11 law.

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## BILL ANALYSIS

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Date of Hearing: April 5, 2011

## ASSEMBLY COMMITTEE ON HUMAN SERVICES

Jim Beall Jr., Chair

AB 862 (Silva and Jeffries) - As Introduced: February 17, 2011

SUBJECT : Developmental services: Regional Center Records Act

SUMMARY : Enacts the Regional Center Records Act (RCRA), requiring regional centers (RCs) to disclose specified information to the public upon request. Specifically, this bill :

- 1) Requires that a RC, upon request from a member of the public, make available the following information in a reasonable and timely manner:
  - a) The company name and principals of any vendor of the RC;
  - b) Vendor program designs;
  - c) Actual rates per service code;
  - d) Actual rates paid to all vendors;
  - e) Actual rates paid per vendor code;
  - f) Actual rate formulas;
  - g) Actual vendor referral rates;
  - h) Vendor reviews, audits, or quality assurance reports;
  - i) Contracts entered into with any vendor;
  - j) The number of consumers that qualify for a developmental disability waiver;
  - aa) Data regarding actual administrative expenditures to include travel, salaries, and pension costs;
  - bb) Data regarding contracts for services to the regional center, including, but not limited to, leases, vehicles, legal services, consulting, and any other goods or services;

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- cc) Any legal settlements that can be disclosed;
  - dd) Conflict of interest disclosures;
  - ee) Any public moneys used for or by a nonprofit housing organization; and,
  - ff) Audits of the RC.
- 2) Defines "vendor" to mean an individual or entity approved to provide services and supports to consumers pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), and defines "department" to mean the Department of Developmental Services (DDS).
  - 3) Authorizes an RC to charge a fee to cover the actual costs of reproducing documents commensurate with the fee schedule in the California Public Records Act.
  - 4) Requires DDS to consult with RCs to develop policies and procedures to implement the provisions of the RCRA.
  - 5) Provides that nothing in the RCRA shall be construed to limit or change privacy protections afforded under any other provision of law.

EXISTING LAW

- 1) Establishes the Lanterman Developmental Disabilities Services Act (Lanterman Act), under which DDS contracts with 21 private non-profit RCs to provide case management services and arrange for, or purchase, services that meet the needs of individuals with developmental disabilities.
- 2) Establishes the California Public Records Act (CPRA) and requires state and local agencies to make their records



available for public inspection and to make copies available upon request and payment of a fee unless the records are otherwise exempt from disclosure by a state or federal law.

- 3) Provides in the Lanterman Act (at Welfare & Institutions Code Section 4514) that, except for specifically delineated exceptions, all information and records obtained in the course of providing services to people with developmental

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disabilities shall be confidential.

FISCAL EFFECT : Unknown

COMMENTS : The Lanterman Act establishes a comprehensive statutory scheme to provide services and supports to people with developmental disabilities. Direct responsibility for implementation of the Lanterman Act service system is allocated between DDS and 21 RCs. RCs are private nonprofit entities established pursuant to the Lanterman Act that contract with DDS to carry out many of the state's responsibilities under the Act, including intake and assessment, case management, and individual program plan (IPP) development and implementation.

The RC budget for 2010-11 is approximately \$4.1 billion in state and federal funds to serve 244,000 people with developmental disabilities (consumers) by securing or purchasing services based on each consumer's individual needs and choices as determined through the IPP process. Approximately 40,000 vendored service providers deliver a wide range of services to consumers, such as respite care, transportation, day treatment programs, residential placements, supported living services, work support programs, and various social and therapeutic activities.

Although RCs receive substantial public funds to carry out the state's responsibilities under the Lanterman Act, they are not state or local agencies within the meaning of the CPRA and, therefore, are not subject to its records disclosure requirements. A prior bill, introduced in the 2009-10 Session, AB 2220 (Silva), would have designated RCs as local agencies under the CPRA. AB 2220 was held on the Assembly Appropriations Committee Suspense File. Policy concerns were also raised with AB 2220 with respect to whether it would withstand legal challenges, and with the precedent it would establish in potentially subjecting other nonprofits to the disclosure requirements of the CPRA.

Need for this bill : According to the authors, this bill seeks to require more transparency of the 21 RCs. The authors note that:

Recent reports by both investigative journalists and the California State Auditors reveal that operations and expenditures at some of the YRCs] could be more cost

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effective. Currently, the YRCs] use their non-profit status to deny requestors information that would typically be covered under the YCPRA]. It is reasonable to expect YRCs] to share information with the public when they receive all funding from the State of California. Additionally, parents, vendors, staff and people with disabilities could all benefit from a more uniform and transparent process. YThis bill] will require the YRCs], private non-profit community agencies that utilize public funds to provide state mandated services to persons with disabilities, to disclose specific and narrow information under a new act, the Regional Center Records Act.

BSA Audit : The California State Auditor, Bureau of State Audits (BSA), recently issued a report of its review of RC procurement and rate-setting processes. Department of Developmental Services: A more uniform and transparent rate-setting process would improve the cost-effectiveness of regional centers, Report 2009-118, August 2010 (BSA Report). The BSA visited a sample of 6 RCs. For those RCs, the Joint Legislative Audit Committee directed the BSA to review procedures for allowing public access to information on operations and to determine if requests for public records made by service providers in the past two fiscal years were satisfied in a timely manner and within the requirements of the law. The BSA determined "that the

information that regional centers are required to make public is limited to employment contracts and that the regional centers are not required to maintain, and do not maintain, logs of public information requests or track how such requests are fulfilled. As such, we could not perform tests of public or service provider requests for information."

The BSA Report noted the lack of formal and transparent rate-setting and vendor-selection processes by the RCs included in the audit. BSA Report, p. 2. It was noted that the lack of transparency to outside reviewers results in the potential for favoritism and makes it impossible to determine whether RCs are properly taking cost into consideration in selecting among comparable vendors. BSA Report, p. 46.

Budget Trailer Bill : The Governor's Budget for 2011-12 proposed increases in accountability and transparency in the RC system. To promote transparency, the recently chaptered 2011-12 Budget Trailer Bill pertaining to DDS, SB 74 (Committee on Budget & Fiscal Review), Chapter 9, Statutes of 2011, requires each RC to

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adopt, maintain, and post on its Internet Web site a board-approved policy regarding transparency and access to public information. The policy must provide for timely public access to information, including information regarding requests for proposals and contract awards, service provider rates, documentation related to establishment of negotiated rates, audits, and IRS Form 990. Under SB 74, each RC would be required to post at least the following:

- RC annual independent audits;
- Biannual fiscal audits conducted by DDS;
- RC annual reports;
- Contract awards, including the organization or entity awarded the contract, and the amount and purpose of the award;
- Purchase of service policies;
- The names, types of service, and contact information of all vendors, except consumers or family members of consumers;
- Board meeting agendas and approved minutes of open meetings of the board and all committees of the board;
- Bylaws of the RC governing board;
- The annual performance contract and year-end performance contract entered into with DDS;
- The biannual Home and Community-based Services (HCBS) Waiver program review conducted by DDS and the Department of Health Care Services (DHCS);
- The board-approved transparency and public information policy;

The board-approved conflict-of-interest policy; and,  
The annual reports of salary schedules by personnel classification, and operations budget expenditures for administrative services.

In addition, SB 74 requires that DDS establish a transparency portal on its Web site, which is to include, but need not be limited to, all of the following:

- Links to the above RC web sites;
- Biannual fiscal audits conducted by DDS;
- Vendor audits;
- Biannual HCBS Waiver program reviews conducted by DHCS;
- Early Start Program reviews conducted by DDS; and,
- Annual performance contract and year-end performance contract reports.

While there is overlap between the disclosures required by this

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bill and the information required to be posted on the Internet by SB 74 (e.g., RC audits, vendor audits), the lists are largely distinct. A primary difference is in the means by which information is required to be made available. This bill requires that individuals submit requests for information, which RCs must respond to on a case-by-case basis. While much of the information required by SB 74 may be already available to the public upon request, SB 74 requires that the information be posted on RCs' or DDS' websites, making it immediately available to anyone with access to a computer. Under this bill, on the other hand, information must be paid for by each individual requesting it and would require RC staff resources to respond to each request. Under SB 74, information would be available

without cost to the person seeking to access it and would require no staff time once it is posted.

The Association of Regional Center Agencies (ARCA) opposes this bill and points out that "Due to budget reductions and other cost-savings measures, [RC] staff are currently operating under heavy workloads. They are not staffed to respond to records requests without compromising or redirecting staff that could or would otherwise be serving the people we are mandated by law to serve. Our primary mission is to serve people with developmental disabilities and their families, not to divert scarce resources in providing information that could be accessed through alternative means."

The fiscal impact of this bill is within the jurisdiction of the Appropriations Committees; however, the staff resource issue raised by ARCA does have implications for the provision of services to consumers and family members. Without additional staff resources, time spent responding to individual records requests is time not spent on activities that may directly or indirectly impact the delivery of services. This bill authorizes an RC to charge a fee to cover the actual costs of reproducing documents commensurate with the fee schedule in the CPRA. The CPRA, however, limits costs to statutory fees established by the Legislature or the "direct cost of duplication," usually 10 to 25 cents per page. Under the CPRA this cannot include charges for search, review or deletion; although, programming costs to extract electronic data can be included under the CPRA. The CPRA also does not require an agency to create a record, list, or compilation that does not already exist. It is not clear if some of the items subject to disclosure under this bill (e.g., actual rates paid to all

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vendors) would require the creation of lists or compilations that do not otherwise exist, which, of course, would require additional staff resources.

Under the CPRA, records are broadly defined to include "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristic." Government Code Section 6252(e). The CPRA further provides for various exemptions. The RCRA established by this bill, on the other hand, does not provide broad access to RC records with delineated exemptions. It is, instead, a selective list of specified information and documents that RCs are to provide upon request. The list is limited and arbitrary. For example, much of the information that would be available to the public on the Internet under SB 74 is not included in the information required to be produced under this bill.

If construed as an RC counterpart to the CPRA, this bill could arguably limit access to myriad types of RC records and, thus, hinder the transparency that this bill is intended to promote. A principle of statutory construction is that when one or more things of a class are expressly mentioned others of the same class are excluded: *Expressio unius est exclusio alterius*. By enacting RC records access requirements specifying a finite list of documents to which members of the public are to have access, the RCRA could be interpreted to preclude access to other RC records, not included in the list. Making the list more open-ended, on the other hand, would require, as in the CPRA, specification of those records that are exempt from disclosure, such as employee personnel records, confidential consumer information, etc. It would also require far more staff resources to respond to records requests.

Alternative approaches : Following are two alternative approaches to increasing transparency in the RC system that may be more practical and cost-effective:

- 1) As noted, SB 74, the DDS Trailer Bill, takes a different approach by requiring specified information to be posted on each RC's Web site. This has the advantages of making information available to the entire public, not just the individual requesting it, and of avoiding the staff time required to respond to multiple, duplicative requests.

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- 2) Another alternative, which could be considered in place of or

in combination with the first suggested alternative, would be to require RCs to report additional information to DDS that should be available to the public. At that point, the information would become public records subject to disclosure by DDS under the CPRA.

#### PROPOSED AMENDMENTS

The authors are reportedly willing to accept the following as authors' amendments, based on alternative approach number 1), above:

Delete the current language of this bill and, instead, amend Section 4629.5(b) of the Welfare & Institutions Code (added by SB 74), as follows:

(b) To promote transparency, each regional center shall include on its Internet Web site, as expeditiously as possible, at least all of the following:

- (1) Regional center annual independent audits.
- (2) Biannual fiscal audits conducted by the department.
- (3) Regional center annual reports pursuant to Section 4639.5.
- (4) Contract awards, including the organization or entity awarded the contract, and the amount and purpose of the award.

(5) The actual rates paid to each vendor.

(6) Any public funds provided to a nonprofit housing organization outside the request for proposals process.

~~(5) (7) Purchase of service policies.~~

~~(6) (8) The names, types of service, principals, and contact information of all vendors, except consumers or family members of consumers.~~

~~(7) (9) Board meeting agendas and approved minutes of open meetings of the board and all committees of the board.~~

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~~(8) (10) Bylaws of the regional center governing board.~~

~~(9) (11) The annual performance contract and year-end performance contract entered into with the department pursuant to this division.~~

~~(10) (12) The biannual Home and Community-based Services Waiver program review conducted by the department and the State Department of Health Care Services.~~

~~(11) (13) The board-approved transparency and public information policy.~~

~~(12) (14) The board-approved conflict-of-interest policy.~~

(15) Conflict of interest disclosures.

~~(13) (16) Reports required pursuant to Section 4639.5.~~

(17) Any legal settlements that can be disclosed.

#### REGISTERED SUPPORT / OPPOSITION :

##### Support

ResCoalition (sponsor)  
Equate. Advocate.

##### Opposition

Association of Regional Center Agencies (ARCA)

Analysis Prepared by : Eric Gelber / HUM. S. / (916) 319-2089

## LEGISLATIVE AGENDA ITEM DETAIL SHEET

**BILL NUMBER/ISSUE:** Assembly Bill 533- Aging and independent living services

**SUMMARY:** Existing law designates area agencies on aging (AAA) as local units on aging in California, which are financially supported by a variety of sources, including federal funding, state and local government assistance, the private sector, and individual contributions. This bill would continuously appropriate, from the Federal Trust Fund, in the absence of enactment of the annual Budget Act by July 1 of a fiscal year, to (1) the California Department of Aging, the amount of federal funds contained in the Federal Trust Fund necessary to pay area agencies on aging for the administration of programs under their jurisdiction; and (2) the Department of Rehabilitation, the amount of federal funds contained in the Federal Trust Fund necessary to pay independent living centers (ILCs) for the administration of programs under their jurisdiction, pending enactment of the Budget Act.

**BACKGROUND:** AAAs and ILCs are important components of California's system of home and community-based long-term care services. They support and enable an individual's ability to remain independent, contributing members of their communities by administering or overseeing a range of programs and services for people living with disabilities. Many of these programs exist because of partnerships, obligations and funding commitments from both the federal and state government, as well as local governments. Since a significant portion of these services' funding comes from the federal government, those funds must pass through the state. The state receives the funds from the federal government and deposits them into the Federal Trust Fund, then distributes the resources to the appropriate local agencies via the annual state budget act.

**ANALYSIS/DISCUSSION:** AB 533 creates a pass-through mechanism enabling a continuous appropriation of federal funds appropriated to the State of California for the purposes of supporting ILCs and AAAs. Specifically data for the past 30 years, from 1979-80 through 2009-10, indicate that the state budget has passed prior to July 1st, 12 of the 30 years. Because the programs addressed by this bill operate with very small margins, administrators must pursue lines of credit during a budget crisis and are not reimbursed for related expenses, such as fees and interest. In addition, some of the local programs' credit records suffer as a result of these emergency loans.

California has 33 AAAs which provide services that are essential to the health and well-being of older adults, California also has 29 ILCs which provide services to people with disabilities enabling them to remain in their own homes and communities.

AB 533 is supported by AARP, Congress of California Seniors (CCS) and National Association of Social Workers, California Chapter (NASW-CA). AB 533 was passed by 85

Assembly Committee on Aging and Long Term Care on 3/29/2011 and re-referred to Assembly Human Services Committee.

**COUNCIL STRATEGIC PLAN OBJECTIVE:** Support public policies that positively impact the lives of persons with developmental disabilities and their families.

**PRIOR COUNCIL ACTIVITY:** None

**RECOMMENDATION(S):** Support with amendments to include the Department of Developmental Services as the developmental services system (regional centers) face similar issues as AAAs and ILCs when budgets are not passed in a timely manner.

**ATTACHMENT(S):** AB 533

**PREPARED:** Karim Alipourfard, April 5, 2011

**ASSEMBLY BILL**

**No. 533**

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**Introduced by Assembly Member Yamada**

February 15, 2011

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An act to add Division 11 (commencing with Section 19900) to the Welfare and Institutions Code, relating to social services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 533, as introduced, Yamada. Area agencies on aging: independent living centers: funding.

Existing law designates area agencies on aging as local units on aging in California, which are financially supported by a variety of sources, including federal funding, state and local government assistance, the private sector, and individual contributions.

Existing law also provides for independent living centers, for the purpose of assisting individuals with disabilities in their attempts to live fuller and freer lives outside institutions, and achieve social and economic independence.

This bill would continuously appropriate from the Federal Trust Fund, in the absence of enactment of the annual Budget Act by July 1 of a fiscal year, (1) to the California Department of Aging, the amount of federal funds contained in the Federal Trust Fund necessary to pay area agencies on aging for the administration of programs under their jurisdiction, and (2) to the Department of Rehabilitation, the amount of federal funds contained in the Federal Trust Fund necessary to pay independent living centers for the administration of programs under their jurisdiction, pending enactment of the Budget Act.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Division 11 (commencing with Section 19900)  
2 is added to the Welfare and Institutions Code, to read:

3  
4 DIVISION 11. FUNDING FOR SERVICES FOR SENIORS  
5 AND PERSONS WITH DISABILITIES  
6

7 19900. (a) Notwithstanding Section 13340 of the Government  
8 Code, in any fiscal year in which the Budget Act is not enacted by  
9 July 1 of that fiscal year, there is hereby continuously appropriated  
10 from the Federal Trust Fund the following sums:

11 (1) To the California Department of Aging the amount of federal  
12 funds contained in the Federal Trust Fund necessary to pay area  
13 agencies on aging for the administration of programs under their  
14 jurisdiction, as provided in Division 8.5 (commencing with Section  
15 9000). The Department of Finance, upon enactment of the Budget  
16 Act and in the absence of this action being taken by the Legislature  
17 or the Governor in that Budget Act, may reduce the applicable  
18 Budget Act allocations by the amount of any payments made  
19 pursuant to this paragraph.

20 (2) To the Department of Rehabilitation the amount of federal  
21 funds contained in the Federal Trust Fund necessary to pay  
22 independent living centers for the administration of programs under  
23 their jurisdiction, as provided in Chapter 9 (commencing with  
24 Section 19800) of Division 10. The Department of Finance, upon  
25 enactment of the Budget Act and in the absence of this action being  
26 taken by the Legislature or the Governor in that Budget Act, may  
27 reduce the applicable Budget Act allocations by the amount of any  
28 payments made pursuant to this paragraph.

29 (b) If payments are made to area agencies on aging or  
30 independent living centers pursuant to this section, the first  
31 payment shall be made on July 15, with payments to be made on  
32 the 15th of each month thereafter, until the enactment of the Budget  
33 Act.



1 SEC. 2. This act is an urgency statute necessary for the  
2 immediate preservation of the public peace, health, or safety within  
3 the meaning of Article IV of the Constitution and shall go into  
4 immediate effect. The facts constituting the necessity are:

5 In order to ensure that area agencies on aging and independent  
6 living centers will be able to prevent interruptions in important  
7 services provided to elderly persons and persons with disabilities  
8 if the Budget Act of 2011 is not enacted in a timely manner, it is  
9 necessary that this act take effect immediately.

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**Introduced by Senator Emmerson**

February 7, 2011

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An act to amend Section 12300 of the Welfare and Institutions Code, relating to public social services.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 176, as introduced, Emmerson. In-Home Supportive Services.

Existing law provides for the county-administered In-Home Supportive Services (IHSS) program, under which qualified aged, blind, and disabled persons are provided with services in order to permit them to remain in their own homes and avoid institutionalization.

This bill would make a technical, nonsubstantive change to an IHSS program provision.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 12300 of the Welfare and Institutions  
2     Code is amended to read:  
3     12300. (a) The purpose of this article is to provide in every  
4     county in a manner consistent with this chapter and the annual  
5     Budget Act those supportive services identified in this section to  
6     aged, blind, or disabled persons, as defined under this chapter,  
7     who are unable to perform the services themselves and who cannot  
8     safely remain in their homes or abodes of their own choosing unless  
9     these services are provided.  
10    (b) Supportive services shall include domestic services and  
11    services related to domestic services, heavy cleaning, personal

1 care services, accompaniment by a provider when needed during  
2 necessary travel to health-related appointments or to alternative  
3 resource sites, yard hazard abatement, protective supervision,  
4 teaching and demonstration directed at reducing the need for other  
5 supportive services, and paramedical services ~~which~~ *that* make it  
6 possible for the recipient to establish and maintain an independent  
7 living arrangement.

8 (c) Personal care services shall mean all of the following:

9 (1) Assistance with ambulation.

10 (2) Bathing, oral hygiene, and grooming.

11 (3) Dressing.

12 (4) Care and assistance with prosthetic devices.

13 (5) Bowel, bladder, and menstrual care.

14 (6) Repositioning, skin care, range of motion exercises, and  
15 transfers.

16 (7) Feeding and assurance of adequate fluid intake.

17 (8) Respiration.

18 (9) Assistance with self-administration of medications.

19 (d) Personal care services are available if these services are  
20 provided in the beneficiary's home and other locations as may be  
21 authorized by the director. Among the locations that may be  
22 authorized by the director under this paragraph is the recipient's  
23 place of employment if all of the following conditions are met:

24 (1) The personal care services are limited to those that are  
25 currently authorized for a recipient in the recipient's home and  
26 those services are to be utilized by the recipient at the recipient's  
27 place of employment to enable the recipient to obtain, retain, or  
28 return to work. Authorized services utilized by the recipient at the  
29 recipient's place of employment shall be services that are relevant  
30 and necessary in supporting and maintaining employment.  
31 However, workplace services shall not be used to supplant any  
32 reasonable accommodations required of an employer by the  
33 Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.;  
34 ADA) or other legal entitlements or third-party obligations.

35 (2) The provision of personal care services at the recipient's  
36 place of employment shall be authorized only to the extent that  
37 the total hours utilized at the workplace are within the total personal  
38 care services hours authorized for the recipient in the home.  
39 Additional personal care services hours may not be authorized in  
40 connection with a recipient's employment.

1 (e) Where supportive services are provided by a person having  
2 the legal duty pursuant to the Family Code to provide for the care  
3 of his or her child who is the recipient, the provider of supportive  
4 services shall receive remuneration for the services only when the  
5 provider leaves full-time employment or is prevented from  
6 obtaining full-time employment because no other suitable provider  
7 is available and where the inability of the provider to provide  
8 supportive services may result in inappropriate placement or  
9 inadequate care.

10 These providers shall be paid only for the following:

11 (1) Services related to domestic services.

12 (2) Personal care services.

13 (3) Accompaniment by a provider when needed during necessary  
14 travel to health-related appointments or to alternative resource  
15 sites.

16 (4) Protective supervision only as needed because of the  
17 functional limitations of the child.

18 (5) Paramedical services.

19 (f) To encourage maximum voluntary services, so as to reduce  
20 governmental costs, respite care shall also be provided. Respite  
21 care is temporary or periodic service for eligible recipients to  
22 relieve persons who are providing care without compensation.

23 (g) A person who is eligible to receive a service or services  
24 under an approved federal waiver authorized pursuant to Section  
25 14132.951, or a person who is eligible to receive a service or  
26 services authorized pursuant to Section 14132.95, shall not be  
27 eligible to receive the same service or services pursuant to this  
28 article. In the event that the waiver authorized pursuant to Section  
29 14132.951, as approved by the federal government, does not extend  
30 eligibility to all persons otherwise eligible for services under this  
31 article, or does not cover a service or particular services, or does  
32 not cover the scope of a service that a person would otherwise be  
33 eligible to receive under this article, those persons who are not  
34 eligible for services, or for a particular service under the waiver  
35 or Section 14132.95 shall be eligible for services under this article.

36 (h) (1) All services provided pursuant to this article shall be  
37 equal in amount, scope, and duration to the same services provided  
38 pursuant to Section 14132.95, including any adjustments that may  
39 be made to those services pursuant to subdivision (e) of Section  
40 14132.95.

1 (2) Notwithstanding any other provision of this article, the rate  
2 of reimbursement for in-home supportive services provided through  
3 any mode of service shall not exceed the rate of reimbursement  
4 established under subdivision (j) of Section 14132.95 for the same  
5 mode of service unless otherwise provided in the annual Budget  
6 Act.

7 (3) The maximum number of hours available under Section  
8 14132.95, Section 14132.951, and this section, combined, shall  
9 be 283 hours per month. Any recipient of services under this article  
10 shall receive no more than the applicable maximum specified in  
11 Section 12303.4.

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**Introduced by Senator Emmerson**

February 18, 2011

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An act to amend Section 4905 of the Welfare and Institutions Code, relating to public social services.

LEGISLATIVE COUNSEL'S DIGEST

SB 889, as introduced, Emmerson. The protection and advocacy agency.

Existing law prescribes, in accordance with federal law, the powers of the protection and advocacy agency, which is a private, nonprofit corporation charged with protecting and advocating for the rights of persons with developmental disabilities and mental disorders.

This bill would make a technical, nonsubstantive change to the law relating to the protection and advocacy agency.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 4905 of the Welfare and Institutions Code  
2     is amended to read:  
3     4905. (a) No employee or agent of a facility, program, or  
4     service shall subject a person with a disability to reprisal or  
5     harassment or directly or indirectly take or threaten to take any  
6     action that would prevent the person, his or her legally authorized  
7     representative, or family member from reporting or otherwise  
8     bringing to the attention of the protection and advocacy agency  
9     any facts or information ~~relative~~ relating to suspected abuse,  
10    neglect, or other violations of the person's rights.

1 (b) Any attempt to involuntarily remove from a facility,  
2 program, or service, or to deny privileges or rights without good  
3 cause to a person with a disability by whom or for whom a  
4 complaint has been made to the protection and advocacy agency,  
5 within 60 days after the date the complaint is made or within 60  
6 days after the conclusion of any proceeding resulting from the  
7 complaint, shall raise a presumption that the action was taken in  
8 retaliation for the filing of the complaint.

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## California's 2011-2012 Budget: Reductions to Aging and Long-Term Care Programs

*On Thursday, March 24, 2011, Governor Brown signed into law a series of budget-related measures, which consist of significant cuts to health and human services programs, including those that serve seniors and people with disabilities.*

### Understanding the Problem

On Thursday, March 24, 2011, Governor Brown signed into law a series of budget-related measures (referred to as “trailer bills”) recently approved by the California Legislature, which are estimated to reduce the existing \$26.6 billion budget deficit by \$11.2 billion through spending reductions and other modifications. The program reductions outlined in the signed trailer bills consist of significant cuts to health and human services programs, including those that serve seniors and people with disabilities.<sup>1-5</sup>

### Understanding the Process

Budget “trailer bills” typically follow or trail the main budget bill after it is passed and signed into law by the governor. However, the main budget bill (SB 69) has not been sent to the governor. Democrats and Republicans continue to deliberate on how to close the remaining budget deficit, either by additional reductions, revenue enhancements or other program changes. To this end, further cuts could be proposed and adopted beyond what are reflected in this document. Governor Brown is also expected to release his May Revision of the 2011-2012 budget in the next few months, which will reflect updated state spending and revenue estimates as well as additional budget modifications based on these figures.

## 2011-2012 Budget: Program Reductions Impacting Seniors

### In-Home Supportive Services (IHSS)

IHSS provides in-home assistance to low-income adults who are over 65 years of age, blind, or disabled, and to children who are blind or disabled. IHSS served approximately 439,944 individuals in FY 2009-10.<sup>6</sup>

### IHSS Reductions

- **Reduction in Hours:** In January, the governor proposed an 8.4 percent reduction to assessed hours for all IHSS recipients for a General Fund (GF) savings of \$127.5 million in 2011-12.
  - ▶ The Legislature rejected this proposal.

- **Eliminate Domestic and Related Services for Certain Recipients:** The governor's proposed budget sought to eliminate domestic and related services (e.g., housework, shopping for food, meal preparation and cleanup, and laundry) for consumers living with their personal care attendant and for consumers living in any shared living arrangement, as well as recipients under eighteen years of age who live with a parent who is able and available to provide these services. This proposal would have impacted more than 300,000 IHSS recipients, for a GF savings of \$236.6 million in 2011-12.
  - ▶ The Legislature rejected this proposal.
- **Eliminate IHSS Hours for Recipients without Physician Certification:** This proposal conditioned the provision of IHSS services upon a physician's written certification that personal care services are necessary to prevent out-of-home care. The budget proposal indicated that eliminating IHSS services for recipients who do not obtain physician certification would impact approximately 43,000 recipients, providing a GF savings of \$120.4 million in 2011-12.
  - ▶ The Legislature approved this proposal. The governor signed this measure in trailer bill SB 72, Chapter 8, Statutes of 2011.
- **Eliminate State Funding for IHSS Advisory Committees:** The governor proposed to eliminate all state funding for IHSS advisory committees (representing a GF savings of \$1.6 million in 2011-12), with counties having the option to continue funding advisory committee operations. The IHSS advisory committees are responsible for submitting program recommendations to county boards of supervisors.
  - ▶ The Legislature modified this proposal, reducing \$1.4 million GF from the IHSS Advisory Committees and eliminating the mandate. It also retained \$3,000 for each of the 56 Public Authorities (PA) to support the continued operation of Advisory Committees within each PA budget. The governor signed this measure in trailer bill SB 72, Chapter 8, Statutes of 2011.

### **New IHSS Program Savings**

The following proposals and program savings were not included in the governor's proposed January budget, but have since been identified and authorized in trailer bill SB 72, Chapter 8, Statutes of 2011.

- **Caseload Savings:** \$83.4 million GF in IHSS savings has been identified due to a recalculation of IHSS caseload both in 2010-11 and 2011-12, based on more recent data that project numbers of IHSS recipients and hours paid.
- **Community First Choice Option:** \$128 million in GF savings has been identified due to the assumption that the administration will apply and qualify for the new federal Community First Choice State Plan Option that provides community-based personal attendant services and supports to individuals meeting nursing facility eligibility criteria. This option would provide a six percent increase in California's Federal Medical Assistance Percentage (FMAP), the amount that the federal government matches for each state dollar budgeted for the MediCal program (California's Medicaid Program).

- **Medication Management:** A new pilot program has been authorized to assist with medication management for specified IHSS recipients, for a net annual savings of \$153.1 million GF. If these savings are not realized through this pilot program, then the Legislature may pass legislation to arrive at those savings in the 2012-13 fiscal year. If no further mechanism is put in place to achieve savings, and if the pilot fails to achieve all of the savings, then the administration may impose an across-the-board reduction in authorized IHSS hours in order to achieve the balance of the 2012-13 savings.

### **Adult Day Health Care (ADHC)**

ADHC is a community-based day care program that provides health, therapeutic, and social services to persons at-risk of nursing home placement. In FY 2008-09, ADHC served 47,345 individuals.<sup>7</sup>

- **Program Elimination:** The governor proposed eliminating the ADHC program, for a GF savings of \$1.5 million in 2010-11 and \$176.6 million GF savings in 2011-12.
  - ▶ The Legislature approved the elimination of ADHC as a Medi-Cal optional state plan benefit, but modified the proposal to cut \$90 million GF, with the intent to create a new, more narrowly-defined Medicaid waiver program called Keeping Adults Free from Institutions (KAFI). The governor signed this measure in trailer bill AB 97, Chapter 3, Statutes of 2011, providing \$85 million GF to fund the new KAFI program.

### **Multipurpose Senior Services Program (MSSP)**

MSSP provides case management services for seniors age 65 and older who are Medi-Cal eligible and who qualify for placement in a nursing facility but who wish to remain in the community. In addition to case management services, MSSP funds can purchase adult day care, housing assistance, chore and personal care assistance, protective supervision, respite, transportation, meal services, social services, and communications services. In FY 2008-09, MSSP served approximately 13,600 individuals.<sup>7</sup>

- **Program Elimination:** The governor proposed eliminating MSSP for a GF savings of \$19.9 million in 2011-12.
  - ▶ The Legislature rejected this proposal and instead reduced the program by up to \$2.5 million GF, directing the administration to consult with the federal government about how to achieve the savings operationally and minimize any impacts on the number of individuals served. This program reduction is included in the main budget bill (SB 69) but, at press time, it had not been signed by Governor Brown. Therefore, this program reduction is not in effect at this time.

### **Supplemental Security Income/State Supplementary Payment (SSI/SSP)**

SSI/SSP is a federal/state income program that provides a monthly cash benefit to low-income aged, blind, disabled individuals or couples. In California, the SSI payment is augmented with a State Supplementary Payment (SSP) grant. These cash grants assist recipients with basic needs and living expenses.

- **Reduce SSI/SSP Grants for Individuals to the Federal Minimum:** This proposal reduces monthly SSP grants for individuals to the federally required minimum payment standard. This proposal would reduce the maximum monthly SSI/SSP cash grant for individuals by \$15 per month (from \$845 to \$830), beginning June 1, 2011 for an estimated GF savings of \$14.7 million in 2010-11 and \$177.3 million in 2011-12.
  - ▶ The Legislature approved this proposal. The governor signed this measure in trailer bill SB 72, Chapter 8, Statutes of 2011.

### Medi-Cal Reductions

Medi-Cal is the federal-state jointly funded program that provides health care services for low-income Californians. The governor's budget proposed a range of Medi-Cal reductions, including the following:

- **Utilization Controls:** The governor proposed setting a maximum annual benefit dollar cap on hearing aids (\$1,510); durable medical equipment (\$1,604); incontinence supplies (\$1,659); urological supplies (\$6,435); and wound care (\$391). In addition, the governor proposed limits on prescriptions (except life saving drugs) to six per month and limits on the number of doctor visits to 10 per year.
  - ▶ The Legislature rejected proposals for caps on prescriptions, durable medical equipment, and medical supplies. However, the Legislature approved reductions of \$62 million GF by imposing the cap on hearing aids, imposing a "soft cap" of seven visits to physicians and clinics, and eliminating coverage for over-the-counter cough and cold products and enteral nutrition products. The governor signed this measure in trailer bill AB 97, Chapter 3, Statutes of 2011.
- **Out-of-Pocket Responsibility:** The governor's budget proposed a \$5 co-payment on physician, clinic, dental, and pharmacy services (\$3 on lower cost preferred drugs) for savings of \$294.4 million GF in 2011-12. The proposal also included a \$50 co-payment on emergency room services (GF savings of \$111.5 million in 2011-12) and a \$100/day and \$200 maximum co-payment for hospital stays (GF savings of \$151.2 million in 2011-12).
  - ▶ The Legislature approved this proposal. The governor signed this measure in trailer bill AB 97, Chapter 3, Statutes of 2011.
- **Provider Rate Reduction:** The governor's budget proposed to reduce provider payments by 10 percent for physicians, pharmacy, clinics, medical transportation, certain hospitals, home health, and nursing facilities.
  - ▶ The Legislature approved this proposal for a savings of \$729.6 million GF. The governor signed this measure in trailer bill AB 97, Chapter 3, Statutes of 2011.

### Realignment

As part of the proposed 2011-2012 budget, Governor Brown proposed to realign a range of government services to local jurisdictions, including Adult Protective Services, mental health services, and a range of others.

- ▶ At press time, the realignment proposal was pending in the Legislature for further deliberation.

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